90-81

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# IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

W. DAVID WESTON
Petitioner/Appellant

*V.*

JEFFREY G. BANKS, ET AL.
Defendants

**On Writ of Certiorari to the United States Circuit Court of Appeals For the Tenth Circuit**

## APPELLANT APPENDIX "B - 1" PERTINENT APPEAL COURT BRIEFS AND INTERPRETIVE EXHIBITS

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FOR THE TENTH CIRCUIT
CASES NO. 86-1202, 86-1156, 86-1157

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# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

W. DAVID WESTON
Petitioner/Appellant

*v.*

JEFFREY G. BANKS ET. AL.,
Defendants

## PETITION FOR WRIT OF CERTIORARI

## APPEAL BRIEF OF CROSS-APPELLANT CASCADE ENERGY AND METALS CORPORATION

**UNITED STATES COURT OF APPEALS**
**FOR THE TENTH CIRCUIT**
CASES NO. 86-1202, 86-1156, 86-1157

CASCADE ENERGY AND METALS CORPORATION

Plaintiff/Appellee
and cross-Appellant

vs.

JEFFERY G. BANKS, etc., et.al.,

Defendant/Appellant
and cross-Appellee

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CROSS APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF UTAH
THE HONORABLE SHERMAN A. CHRISTENSEN,
JUDGE

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# BRIEF OF CROSS-APPELLANT CASCADE ENERGY AND METALS CORPORATION

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## STATEMENT OF JURISDICTION

This action was originally filed in the United States District Court for the District of Utah pursuant to 28 U.S.C. Section 1332 (diversity of citizenship). A final order Amending Judgment and Finding of Fact was issued by the District Court on November 20, 1985. An order extending time to file notice of appeal was signed by the District Court on December 18, 1985. Notice of Appeal was timely filed by appellants on January 17, 1986. Notice of Appeal was timely filed by cross-appellants on January 31, 1986. Jurisdiction in this court is based upon 28 U.S.C. Section 1291.

## STATEMENT OF ISSUES

1. Did the trial court err in denying Cascade, as operating manager, damages against Associates who had entered into a joint venture agreement (JOA) for failure to pay their pro rata share of start-up production expenses and business expenses in connection with a mining venture.

2. Did the trial court err in finding that Cascade as operating manager had breached it's fiduciary duty to Associates and acted in bad faith by seeking reimbursement for start-up production costs.

## STATEMENT OF FACTS

Cascade is the owner of the Telegraph Mine. In 1976 Cascade leased the mine to Telegraph Mine, Ltd.a Utah limited partnership ("Prime Lease" Ex. 300). Subsequently, in January of 1979, Telegraph Mine, Ltd. sold a 40% interest in the Prime Lease to Gold Technics Inc. a California corporation which was thereafter reorganized as Gold Technics, Ltd., a California limited partnership ("Gold Technics"

Ex. 305-306). In September of 1980, Rex Montis Silver Company ("Rex Montis"), the generalpartner of Gold Technics purchased 75% of Gold Technics' interest in the Prime Lease (District Court Docket Sheet Number (hereinafter "NR.") 206 Ex.B & Ex 303). The prime lease was then owned 60% by Telegraph Mine Ltd., 30% by Rex Montis and 10% by Gold Technics. Telegraph Mine Ltd., Rex Montis and Gold Technics were each parties to a Joint Venture Agreement dated January 24, 1979 (Ex.303) and a Venture Management Agreement (Ex.304) designating Cascade as the Managing Agent of the Telegraph Mine Joint Venture ("TJV").

In order to facilitate the development, production and sale of gold and silver from the mine, the TJV, through Cascade, in 1980 offered sublease and working interests in the mine. A total of 35 units were offered and sold pursuant to the Telegraph Mining Associates Confidential Memorandum ("Memorandum" Ex. 1). Each Purchaser ("Associate") entered into a Sublease and Working Interest Agreement ("Sublease" Ex.1C) in late 1980 with the Joint Venture through it's Managing Agent. To sublease the interest the Associates were to make annual lease payments to the TJV in the amount of 26% of the gross proceeds from the ore mined and sold until all mineable and merchantable gold and silver was removed ("lease term" Ex.1C p.2) but, in any event, not less than a minimum annual royalty (hereinafter "MAR") of $74,285 per unit. The MAR was paid in the years 1980 and 1981 by each Associate with $30,000 in cash and $44,285 in the form of a recourse promissory note for the years 1982 and following. Payments under the recourse royalty notes were to be made quarterly at the rate of $13.44 per ton of ore mined until fully paid. In the event the Associates failed to mine and sell ore equivalent to the value required to pay the MAR, the Associates could satisfy the obligation by delivering to the TJV another recourse note

for the amount due. Further, if an additional royalty note was required in 1982 the TJV could require the Associates to substitute a new note equal to the sum of the unpaid balance of the 1980 and 1981 notes plus the additional note (Ex.1C,p.5)

Contemporaneous with the execution of the subleases, each Associate entered into a Joint Operating Agreement of the Telegraph Mining Associates ("JOA" Ex.1D) which defined the joint venture relationship between the Associates in the operation of the mine. The Associates appointed Cascade as their common Operating Manager and placed upon Cascade certain agency duties, rights and responsibilities (Ex.1D,Par. 1,2,4,5,6,8,9,10, 11,13, 15,16, 17). Cascade, was required to expend the sum of $800,000 derived from a development loan borrowed by the Associates from the TJV partners (Ex.1D,p.6) in developing the mine pursuant to the mining plan set forth in the Memorandum, which contemplated development of the property by a) deepening an existing incline shaft; b) rehabilitating a second shaft and existing underground haulegways to minimize development costs; c) extending the existing haulegways to connect the two shafts underground; d) preparation of stopes at 400 foot level and working upwards to provide for ore removal (Ex.1,D.P4;G). Then to start-up production, to operate the Telegraph mine (Ex.1D.par.13), oversee the Telegraph Mine Associates project in all aspects (Ex.1Dpar.2), keep the books and records individually for each Associate's sole proprietorship mining business (Ex.1D,par.13(d);11) and to follow the instructions of a majority of the Associates (Ex.1D,par.15). The JOA specified that Cascade was to perform the above--mentioned services on a "best efforts" basis (Ex.1D,par.1,4; NR.215,par.2).

The JOA delineated two distinct phases of the mining process: (1) development (also referred to in the contracts as "pre-production"); and (2) production (Ex.1D,p.1). The development stage consisted of placing the property in a condition such that ore could be removed (Ex.1D, p.4). The production stage was to involve the mining, milling and processing of the ore into a marketable state (Ex.1D,par.13). Production generally consists of two phases: (1) start-up production (where production expenses exceed income from production) (Ex.117;Ex.229 p.2): Trial Transcript (hereinafter "TT") 260-65;2216,2214; NR.215 par.5,6); and (2) full production (where the cash flow from production is sufficient to finance continuing production costs as well as provide a profit).

Early in 1981 it became apparent to Cascade that unexpected cost increases coupled with ever increasing interest rates resulting from rampant inflation would require additional development funds and a modification to the existing mining plan (TT, p.446-451) After consulting with Mr. Harrison Salsbury, a metallurgical researcher with the United States Bureau of Mines, Cascade proposed and the Associates unanimously approved a temporary modification of the mining plan (TT, p.618-621,Ex. 39) which provided for an interim plan to mine surface ores in an open pit and extract the gold therefrom in a process known as "heap leaching". The heap leaching method was adopted by the Associates because the economic risks were less than those risks which might be experienced in the underground method previously approved. The plan was that the proceeds from heap leaching would finance further development of the property for underground mining which was still the objective of the Associates (Ex.39).

After approval of the modified mining plan in July of 1981, the project contemplated two stages of development and production, one for heap leaching and a later one

for underground mining. Under the modified plan, the $800,000 fund was to be used for development of the property for heap leaching. Unlike the development for underground mining there would be no sinking of a shaft in ore and no residual ore production from the development of underground haulegways to be sold as the work proceeded. Rather, development for heap leaching involved construction of a leach pad, containment ponds for barren and pregnant cyanide solution, fresh water storage, facilities to extract gold from cyanide solution, open pits for mining with access roads, overburden removal and ore storage facilities. Although the development and regulatory costs for heap leaching are less than for underground mining, there is a greater lag time between the end of development and the realization of full production. While there is a longer period of start-up production and attendant cash shortfall involved with heap leaching, once the heap leaching resulted in full production proceeds from production would be more than sufficient for underground mining development (Ex.117).

In July 1981, the Associates approved and adopted the "Telegraph Mining Associates Chargeable Cost Procedure" ("Charge Procedure") (Ex.40.01,41 p.2;NR..313 item III (1)(2);) which set forth the items to be reimbursed to Cascade for the mine operation. The charge procedure was not limited to charges for development expenses, but also expressly applied to charges for production expenses:

> "Cascade, as the Operating Manager of the Telegraph Mining Associates program, shall charge the Associates for developing and operating the Telegraph, as set forth below."(Emphasis added) (Ex.40.01)

The Charge Procedure specifically provided for reimburse-

ment of Cascade's out-of-pocket expenses incurred in operating the mine.

In September of 1981, the Associates formed a first Management Committee ("Mgt. Committee") consisting of Herbert Stoltenberg, Chris Waugh and Bernard Hodowski for purposes of overseeing Cascade's functions as the Operating Manager in the expenditure of the development loan (Ex.61A). The Associates Charge Procedure for reimbursement of chargeable costs was further recognized and adopted by the Associates Mgt. Committee in September of 1981 (Ex.40.01,66.1;NR.215,par 3,4). From September 1981 until March of 1982, the Mgt. Committee approved the work orders and each month's budget as submitted by Cascade pursuant to the procedure. During this period the Mgt. Committee controlled the development loan funds in a separate bank account from which they executed checks to pay for the work as it advanced (Ex.61A,p.11;TT,493-94,1199,1270).

In March of 1982 following the default of the following Associates the TJV Committee held a public sale (TT.2432-39) in which Cascade and Interphase Corp. purchased the defaulted interests by paying the 1981 MAR and assuming the development note obligations, which resulted in $165,000 of working capital for the TJV in 1982.

| Defaulted Associates | Working Interests | Purchaser | Capital Acquired |
|---|---|---|---|
| McKean | 1 | Cascade | $30,000 |
| Halverson | 1/2 | Cascade | $15,000 |
| Benzer/Raffoni | 1 | Cascade | $30,000 |
| Whitney | 1 | Cascade | $30,000 |
| Jorgenson | 1 | Cascade | $30,000 |
| McDonald | 1 | Interphase | $30,000 |
| Total | | | $165,000 |

The above amounts were paid to the TJV by checks which were deposited into the TJV bank account and posted in TJV ledger account 1002 entitled "Continental Checking." The Cascade deposit was posted as entries No. 21 for $105,000 and No. 38 for $30,000. The Interphase deposit was posted as entry No. 44 for $30,000. The offsetting income account entry was posted into Ledger Account No. 3002 entitled "Royalty Income" as entry No's 260, 261 and 262. (NR. 310 par.17; NR.312,III,Ex.C.E,P.1,7).

In a letter dated April 15, 1982 from Cascade to the Management Committee, Cascade reported that the development loan had been fully expended and that, in March, production had commenced with the stockpiling of 1,500 tons of ore. The letter further stated:

> "The production expense, as shown on the statement for March and amounting to $24,493.99 **is being invoiced directly to each of the Associate members (which equates to approximately $700 for the 1st quarter on a per unit basis)**...." "Each of the Associates [has been given] a notice that unless arrangements are made to pay for the costs of mining and processing, royalty, taxes and such other expenses as are incurred in the operation, **the costs of mining will be billed to them directly on a quarterly basis** and sufficient ounces of the production necessary to over these costs will be sold...." (emphasis added). (Ex.41.03,p.1-2)

Thus, Cascade reported to the Mgt. Committee that the production costs would be billed to the Associates on a quarterly basis and that enough gold would eventually be sold to cover production costs and provide reimbursement to the Associates.

Five days later, in a letter dated April 20, 1982 (Ex. 86) Cascade accounted directly to each Associate for the

expenditure of the development loan funds and reported to them that Cascade had incurred additional expenses for start-up production costs. Cascade also provided notice to the Associates that such additional production cost expenses were the responsibility of the Associates:

> "now that production has commenced and with the expenditure of all of the loan funds, our quarterly reporting will take on a new format to reflect the costs of production, continuing exploration and development, and the results thereof. A copy of this format is submitted to you for the first quarterof production in 1982. The cost of production for the period shown is the amount which is now in excess of the development loan funds. The first quarter summary also reflects the necessity of selling such of the production, as it is produced to meet these on going mining costs. To date, these continuing expenses have been met by personal advances made by Cascade and myself. **These expenses are an Associate obligation.**" (emphasis added).

Attached to the April 20th letter to each Associate was the first quarter summary of production and an invoice showing production expenses of $699 per 1/35 unit with no proceeds from the sale of gold as yet (Ex.86).

The summary of production for the first quarter of 1982 set forth the tons of ore mined during the quarter and the production expenses in dollars as well as the average price of metals for the quarter. In addition each Associate was provided a "Telegraph Monthly Concentration Plant Summary" which set out the day to day production at the mine and the gold content in the mined ore. The summaries identified 1,145.5 tons as having been removed to the leach pad ready for gold extraction (Ex. 86).

Defendant Stoltenberg paid his first quarter assessment to Cascade on April 21, 1982 immediately after receiving the above referenced letter and invoice (TT,477-78; Ex.131.02;). Stoltenberg, an attorney, engineer and member of the Mgt. Committee, made no objection to the April 20th letter. No objections were voiced by any Associates to Cascade's April 1982 letter stating that expenses were an Associates' obligation until at least seven months had passed (TT.304,182; Telegraph Mining Associates August 14, 1982 meeting transcript Ex.93A, (hereinafter "93AT")).

By letter dated June 19, 1982 from Cascade to the Associates, Cascade informed the Associates that, due to certain force majeure events and the continuing decline in the price of gold, the project was experiencing cash flow problems during the "start-up production period" and notified them that Cascade would be requesting payment of the invoiced production costs for the second quarter which would be issued at the end of June (Ex.88;TT.137-39). Accordingly, each Associate was sent a second quarter summary of production and expenses showing production costs exceeding proceeds from production. Accompanying the second quarter production summary was a second quarter invoice, billing each Associate for it's pro rata share of the production costs for the second quarter (Ex.90).

By letter, dated July 19, 1982 Cascade reported to the Associates that it had completed the first full quarter of start-up production and reported losses due to force majeure events (Ex.91;TT,139-40). The letter concluded:

> "Nevertheless, thru (sic) the past start-up production period, our cash flow (gold sales) has fallen behind our start up expenses and this is reflected in your current statements for the 2nd Quarter. We would certainly like it to be otherwise, but it isn't. We have had our share of adversity in the

usual experiences of start up production, and frankly submit that in the overall industry experience we have done exceptionally well. These expenses have been made up from loans received by Cascade and reloaned to the program. The loans are secured by equipment necessary in the Telegraph Mine mining and crushing operations. These expenses now total $325,000 which includes the purchase of the head frame and its delivery to site. One such loan has been made to Cascade by the Downey State bank in the amount of $200,000. at 20% interest. The note is due August 3rd 1982. It is imperative that the note be reduced by at least $40,000 and the current interest paid. An additional note in the amount of $65,000 is due Sept. 6th at 19.5 % interest." "**Thus, it is absolutely necessary that the sums due Cascade, which Cascade has advanced to the operation be paid in order that Cascade meet its obligations. Therefore, as stressed in the May report, it is now necessary that you pay your fair share of the current start up production expenses as advanced until the continuing production and sale of precious metals catches up and overtakes these past production expenses.**" (emphasis added). (Ex.91,5-6).

On or about July 27, 1982, Weston received a telephone call from defendant Associate, Waugh, who questioned the amount of the second quarter billing from Cascade and informed Weston that five Associates, including Harmatz and Hodowksi who were certified public accountants, would be coming to Salt Lake on July 29th to conduct an audit of Cascade's books and records (TT,140,163).

In response to Waugh's inquiry, Weston offered to purchase Waugh's 1/70th Associate and other interests in the mine for $29,000 which offer Waugh accepted. Weston

informed Waugh that he would present Waugh with a cashiers check upon his arrival in Salt Lake City with the other Associates who were coming to conduct the audit (TT.1889-90).

On July 29, 1982 Associates Waugh, Bentz, Ashley, Harmatz and Hodowski arrived in Salt Lake City, for purposes of conducting an audit of Cascade's books and records (TT.163-65) Upon their arrival at the airport, Weston tendered to Waugh, a cashiers check in the amount of $29,000 for the purchase of his interest (TT.1889-90) as per their agreement of two days prior. Waugh refused the check stating it was not enough to purchase his interest. Weston drove the Associates to Cascade's offices where they spent the entire day from 9:30 a.m. to 11:00 p.m. auditing the books and records as maintained by Cascade for each Associate (TT,163-82). The focus of the audit was on the appropriateness of the expenditures as identified following the Associates Charge Procedures (Ex.40.01,p.4,par.4). During the audit no one questioned Cascade's right under the contract documents to assess the Associates for production costs (TT,167).

At the conclusion of the audit the Associates present expressed their satisfaction with Cascade's handling of the accounting and with the appropriateness of the expenses billed to the Associates (TT.173-182). The Associates present acknowledged the necessity of collecting the March and June production billings and directed Cascade to schedule an annual meeting of Associates in Las Vegas for the specific purpose of explaining the financial needs of the project in order to facilitate collection of the past assessments and to form a Management Committee to assist in collecting future assessments (TT,167-72;1990-91).

Subsequently, on August 14, 1982 an annual meeting of the Associates was held in Las Vegas (TT183-

84;Ex.93AT;Ex.97). At this meeting the following Associates were present:

> Ashley, Bentz, Cascade, Doub, Gnolaum Unitrust, Harmatz, Hodowski, Nickerson, Resource Concepts, Interphase Corporation, Smith, Stoltenberg, Waugh, Ohara, Higashi, Green. (Ex.97;TT,184-85)

The meeting was videotaped (Ex.93A) for the benefit of those Associates who could not attend and was sent to those Associates who requested copies (TT,85;Ex.93A).

During the August 14th meeting Cascade reported that the development loan funds had been fully expended during the first quarter. Cascade also reviewed the letters submitted to each Associate which gave notice that the Associates would be expected to reimburse Cascade for the expenses then being incurred by Cascade in their behalf (Ex.93A). The start-up production cash flow problems were also explained. Cal Griffith, Cascade's controller, provided a financial report and emphasized the need to have the assessments paid. Griffith made reference to and quoted from contract documents upon which Cascade relied in assessing the Associates for start-up production costs.

> Griffith: "...The accounts receivable from due Cascade from the Telegraph Mining Associates are in the area of $372,000 dollars. In the memorandum Exhibit "B" where we are talking about the Joint Operating Agreement I would like to read from paragraph 10 "compensation and Expenses of the Operating Manager" and I quote: "The purchasers agree that the Operating Manager shall be paid as compensation for...their services the sum of the following: reimbursement of it's out of pocket cost of management incurred for the program which

> shall include travel, expenses, a fair allocation of pro rata share of **operating,** handling, managing and overhead expenses...it is my belief that Cascade...has done their best to make sure the funds were expended in the most economical and feasible way. And I feel that there has been no mismanagement of funds...I calculated that it costs approximately 70 to 80,000 dollars a month to operate the mine...our accounts receivable from the Associates are starting to roll in. But it is imperative that these funds continue to roll in so we can meet our past obligations and continue to go forth in meeting our current obligations as they come due. (emphasis added) (Ex.93AT,p.39)

None of the Associates present at the meeting took issue with the statements that the Associates were contractually liable for the assessments (Ex.93AT).

After the presentation Hodowski spoke to the Associates concerning the results of the recently completed audit.

> "Good Morning. The five gentlemen that are present here went to Utah on July 30th, [sic] to satisfy the Telegraph Associates that things were being conducted in a business like manner. Frankly, I will admit that when we went up there we had an idea that there were some improprieties and I say that because I know David felt that this was the attitude that we had when we came up there. We arrived at9:00 a.m. and we spent the rest of the day - I think we quit finally at 11:30 p.m. - going through all the books and records, reviewing documents. We had discussions on every single point that we had a question on. I will say this that when we left we had a completely 180 degree opinion of how things were run. There are some minor questions

that wecan resolve in the future, but I would say that on a scale of 10 we probably felt that 99% of everything we examined was proper. At this time we also made an effort to portray to David that even though he is the manager at the mine, that we are here to help him ... at that time it was decided that we should elect a steering committee of Associates...."(Ex.93AT,p.53)

At the conclusion of the August 14, 1982 meeting the Associates present at the meeting elected a second Management Committee and subsequently a majority-in-interest entered into a Management Committee Agreement ("Mgt.Agreement"). The committee was comprised as follows: Bentz, Chairman, Ashley, Vice Chairman, Stoltenberg, Secretary and other members Hodowski, Waugh, Green and Smith. Subsequent to the August 14th meeting, the following defendant Associates made partial or full payments on their quarterly billings as set forth below (NR.313,III,Ex.A(4),"Management Accounting Ledgers," p.8,16, ledger accounts No. 1001 and 3000;Ex.125.7,TT.211-12;TTA.337).

| Associate | Date | Amount |
|---|---|---|
| Harmatz and Hodowksi | 7-17-82 | 9,231 |
| Del Ashley | 8-03-82, | 9,231 |
| Lionel Ascher | 8-05-82, | 4,615 |
| Roger Mann | 8-05-82, | 2,000 |
| Robert Doub | 8-06-82, | 9,231 |
| Joseph Bogan | 8-10-82, | 9,231 |
| Chris Waugh | 8-14-82, | 4,516 |
| David Henry | 8-16-82, | 4,200 |
| Sam Hambarian | 8-20-82, | 9,258 |
| Peter Samarin | 8-25-82, | 5,000 |
| Herb Stoltenberg | 9-09-82, | 3,400 |
| George and Pat Slater | 9-11-82, | 2,308 |

| | | |
|---|---|---|
| Jeff Banks | 9-30-82 | 1,000 |
| George Slater 2nd | 10-31-82, | 2,308 |

On August 25, 1982, the 2nd Committee held its first meeting in Downey California (Ex.100). At that meeting the subject of assessments was discussed in the context that some Associates had not yet paid their assessments and several members of the 2nd Committee expressed that an effort should be made to obtain payment of the unpaid assessments. No one at the meeting, including Stoltenberg, voiced an objection concerning Cascade's right to assess the Associates for start up production costs (Ex.100).

At the August 25, 1982 meeting the 2nd Committee approved the language of the Telegraph Associates Resolution-Management Committee Agreement (Management Committee Agreement) which provides in pertinent part:

> "The Associates hereby constitute and appoint and by these presents do hereby make, constitute and appoint the management committee their true and lawful attorneys, for themselves, and in their name, and on their behalf to...(iv) to authorize expenditures of the Associates in carrying out the agency created by this agreement and power of attorney...."

Paragraph 3 of the Management Committee Agreement provides:"

> The management committee, nor any member thereof, shall not be responsible or liable for any assessments made to any associate."

Paragraph 8 of the Agreement reads in pertinent part:"

> ...it is expressly agreed that any costs incurred by

> the Operating Manager in complying with any special requests of the management committee shall be born proportionately by the Associates."

Finally, paragraph 10 of the Agreement states:

> "Each of the members of the Management committee and theOperating Manager shall be indemnified by and reimbursedby the Associates for any personal liability, expense orloss or damage resulting from Torts, in the administrationof or enactment of the agency created hereby."

It was agreed that the Management Committee Agreement would be prepared in final form and forwarded to each Associate for signature. Cascade requested such an agreement before it would incur further production expenseson behalf of the Associates (Ex.93AT, p.21; TT.98; TTA.338). The Agreement was sent to all the Associates along with a bulletin for August reporting the July and August production as well as the proceedings of the August 14th Associates meeting (Ex.97). The agreement was signed by a majority in interest of the Associates, including all of the defendants (Ex.98). In addition, the bulletin reiterated the need for the payment by the Associates of their second quarter billings by no later than September 20, 1982 if production were to continue at the mine. None of the Associates reacted to the August bulletin by claiming that the contracts were non-assessable.

At the next Committee meeting held on September 13, 1982 in Downey, California, the subject of assessments again came up (Ex.103). Cascade distributed an accounting which showed the amount each Associate had paid toward their second quarter billings and emphasized that if not paid soon, serious cash flow problems would result which would jeopardize and encumber the Associates continued opera-

tion of the mine (Ex.103A). As with the other requests of Cascade for payment of the assessments none of the Associates made the claim of nonassessability. Rather, some of the discussion focused on a reduction of the amounts assessed by Cascade where in the view of some members of the 2nd Committee the ore crushed by Cascade failed to meet a minimum standard of commercial value. With regard to that discussion, the minutes for that meeting read as follows:"

> 7. Del Ashley pointed out that the August production records indicated that in 15 out of the 23 instances in which assays were made, the assays were less than the .12 oz. of gold to the ton which had been considered the cut-off point forcommercial ore."
>
> "Mr. Weston said that in July and August much of the ore which was crushed and piled came from the ore dump which remained from the early (1930's and 1940's) operation of the mine, and that much of the dump was fairly low-grade ore."
>
> "Del Ashley asked if, since the tailings piles didn't require as high crushing or mining costs as regular ore, **would there be a reduction in these costs to the Associates**."
>
> **"Del Ashley also suggested that the Associates should not be required to pay for the crushing, hauling, loading, etc. of ore that did not have sufficient values to be commercial."**
>
> "A final decision was not made with respect to either of the last two questions."
>
> "8. Del Ashley suggested that a minimum standard

be established for ore to be mined, crushed, and processed. After discussion, it was decided that ore containing $36.00 of gold per ton be established as the minimum to be mined and processed...."

"**It was decided that a monetary adjustment should be made for all ore mined and processed which did not meet the agreed standards**. Mr. Weston agreed to make a proposal concerning the formula to be used in making such adjustments." (emphasis added) (Ex.103)

The issue of reduction of the assessed costs for non-commercial ore arose again at the next Committee meeting held on September, 20, 1982 in Long Beach, California (Ex.104). The minutes of that meeting read in pertinent part:"

3. Discussion then ensued concerning whether cost adjustments should be expected from the Operator with respect to any non-commercial ore which might have been mined, crushed and otherwise processed in the past, either because of unsatisfactory ore control or inaccurate assay techniques, or both. The consensus of the Committee was that such adjustments should be expected; however, no formal action was taken in the matter."

By letter dated September 18, 1982 from Cascade to the nonpaying Associates, Cascade gave notice of default and made formal demand for the unpaid assessments, specifically citing paragraphs 13(a) and (b) of the Joint Operating Agreement. The letter explained that if the assessments were not fully paid by October 20, 1982 the

nonpaying Associates' interests in the mine would be subject to forfeiture due to the default (Ex.105,TT.224-25).

Thereafter, California committee members sent a letter to Cascade dated November 9, 1982 informing Cascade of an informal decision of some members of the 2nd Committee to offer to purchase for the Associates, six thousand pounds of cyanide in order to extract gold from the leach pile, but only on the condition that Cascade would meet the demands set forth in the letter (Ex.114). Among the demands contained in the letter were adjustments in the amounts assessed the Associates for non-commercial ore, poor assay results and retirement benefits for employees (Ex.114,p.2).

Cascade received a letter dated November 15, 1982 from Herb Stoltenberg, on behalf of the 2nd Committee, to Cascade, setting forth certain directives from the committee to Cascade and the TJV (Ex.120). He directed the TJV to defer action for thirty days from October 10, 1982 on the notices of default previously sent to the non-paying Associates and that interest on the unpaid assessments should accrue at the rate of eighteen percent (18%) per annum.

In November 1982, Stoltenberg contacted Cascade and requested that Cascade prepare a promissory note providing for monthly installments for Stoltenberg to give as payment of the balance on his assessments (Ex.124). In response, Cascade forwarded to Stoltenberg a proposed promissory note providing for installment payments of Stoltenberg's unpaid share of the production costs. In addition, on or about November 16, 1982, Harmatz and Hodowski forwarded a check to Cascade in the amount of $4,500 in payment of the balance owing on the promissory note they had tendered in payment of their second quarter billing (Ex.125.7).

Not until the end of November, 1982, after Cascade had retained an attorney to collect the assessments and

after the attorney had sent a demand letter to the non-paying Associates, did Cascade receive communication from any of the Associates questioning the position consistently taken by Cascade that the Associates were liable for the assessments under the contracts. The issue was raised for the first time in a letter dated November 29, 1982 from Coastal Computers to David Weston (Ex.126,129). By letter dated December 2, 1982, Stoltenberg first notified Cascade that he viewed the contracts as nonassessable except out of the proceeds from production (TT.304 Ex.131.14) Shortly thereafter this litigation commenced.

Approximately four months later, in April of 1983, each of the Defendant Associates filed an accrual tax return for their individual sole proprietorship mining business (schedule C) in accordance with IRS section 461 and treasury regulation section 1.461.1-1(a)(2) which the assessments charged by Cascade during the year 1982 were deducted from their ordinary income regardless of whether the assessments were paid (TT.1432-33,2118-23;Ex.544,546,549).

A significant number of the Associates who are not parties to this action testified at trial or submitted affidavits explaining that they understood the contracts were assessable and they have always interpreted the agreements as such (TT.1110-1115,1136-37,1140-41;NR.267). Further, these Associates i.e. Joseph Green, Harold Masunaga, Yukio Ayabe, Charles Higashi, Marion Harada, Dr. Ohara and Lyle Muller have all paid in full the amounts assessed them by Cascade for production costs (NR.267).

## ARGUMENT

### I.
### THE TRIAL COURT ERRED IN DENYING CASCADE DAMAGES AGAINST THE ASSOCIATES FOR FAILURE TO PAY THEIR PRO RATA SHARE OF START-UP PRODUCTION EXPENSES.

STANDARD OF REVIEW: The interpretation of a contract is a question of law for the Court's determination. Orson v. United States Fidelity and Guaranty Co., 587 P.2d 149 (Utah 1978). The trial court's conclusion on the interpretation of the contract is freely reviewable on appeal because it is a question of law, not of fact. Where the trial court finds that an ambiguity exists so that it is necessary to resolve factual questions as to the parties' intentions, the court's findings are reviewed under the "clearly erroneous" standard of Fed. R. Civ. P. 52(a). United States Fidelity & Guaranty Co. v. Newman, 656 F.2d 457 (9th 1981). Thus, to the extent the appellate review involves an interpretation of the contract language by itself without reference to extrinsic evidence regarding the parties' intentions, the review is strictly a legal interpretation. However, to the extent the review involves factual findings of the judge with regard to the parties' intentions as to the interpretation of the contracts, such findings should not be set aside unless clearly erroneous. The trial court's finding are clearly erroneous when, although there is evidence to support them, the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. United States v. Gypsum Co., 333 U.S. 364, 68 S.Ct. 525, 92 L.Ed 746 (1948).

The trial court held that the Associates were liable under the Joint Operating Agreement ("JOA") and other

contract documents only for the minimum annual royalties and their pro rata share of the $800,000.00 development loan and not for assessments for production costs (Amend. Conc. of Law No.7,Amend Finding No. 106). The trial court appears to have adopted an interpretation of paragraph 13(c) of the JOA that the Associates were not liable for start-up production costs except as offsets to proceeds from production. As a result the respective joint venture sublease interest held by the Associates were found to be nonassessable (Amend Finding Nos. 36,37,66,103,104). The JOA and the other contracts were to be construed under Utah law. Utah law is well established that, where questions arise in giving effect to a written document, the first source of inquiry is within the document. The document should be viewed in its entirety so that all of its parts can be given effect in accordance with its overall purpose. Larrabee v. Royal Dairy Products Co., 614 P.2d 160 (Utah 1980); Minshew v. Chevron Oil Co., 575 P.2d 192 (Utah 1978).

Further, where two or more instruments concerning the same subject matter are executed by the same parties contemporaneously, or at different times in the course of the same transaction, they should be read and construed together so far as determining the respective rights of the parties. Bullfrog Marina, Inc. v. Lentz, 28 Utah 2d 261, 501 P.2d 266 (1973). Accordingly, the JOA, the Sublease, Memorandum, Charge Procedure and Mgt. Agreement must be read and construed together to determine the intention of the parties.

An interpretation of the documents which renders the contract possible and capable of achieving its purposes should be preferred to one which makes its performance impossible. Stangl v. Todd, 554 P.2d 1316, 1319-20 (Utah 1976). As specifically discussed infra, where the contract documents are subject to interpretation, the course of conduct of the parties may be viewed as an aid to the court in

understanding and interpreting the documents so that they can appropriately be enforced. Once the agreement of the parties has been determined, the courts obligation is to enforce the agreement without regard to any determination that one party or another made a wise or unwise decision with respect to entering into such agreements. Skousen v. Smith, 27 Utah 2d 169, 493 P.2d 1003,1005 (1972).

The liability of the Associates for their proportionate share of the production expenses is unambiguously expressed in the paragraphs 10(a), 13(a) and (b) of the JOA. Particularly, paragraph 13 (b) provides:

> "(b) All costs and liabilities incurred in the exploration and development of the Property and the mining, milling and removal of ore therefrom shall be borne and paid for by the Purchasers (Associates) in proportion to their interests.

The Associates contractually agreed to be liable for the costs of "mining", as well as the costs of "milling" and any costs associated with "removal of ore" which are production costs.

Subsection (c) of paragraph 13, however, places a floor under the Associates' liability under subsection (b) for production costs directly related to mining uneconomical ore. It reads as follows:

> "(c) Notwithstanding anything to the contrary contained herein, the Operating Manager (Cascade) shall have no authority, express or implied, to enter into any commitment or obligation on behalf of the Purchasers or otherwise do anything which would subject thePurchasers, or any of them, to any liability in excess of the Purchasers' respective interests in the minerals mined, milled and

removed from the Property and their interest in any proceeds from the sale of said minerals."

This language was originally intended to cover the mining, milling and extraction activities contemplated with underground mining of ore, which thereafter required milling to include crushing, grinding and concentration and from which the recovery and sale of gold would be almost immediate. With the change to a heap leaching mining plan, which was adopted and approved by all the parties, Section 13, of necessity, also took on a changed meaning. Heap leaching did not require grinding or concentration of the minerals. Instead, the available gold and silver were removed directly from the cyanide solution as it was leached over a long period of time. To have meaning the contract, would of necessity have to be construed as now including removal to a leach pad for gold extraction over time and purification followed by the sale of the purified metals.

The Associates contended at trial, and apparently the trial court adopted the interpretation, (See Amended Finding of Facts Nos. 36 and 66) that paragraph 13(c) should be interpreted as negating any personal liability of the Associates for production costs except out of the final proceeds from the sale of minerals produced. In other words, the Associates were only liable for production costs in the sense that such costs were to be deducted from each Associate's share of the proceeds as the minerals were sold. Under the trial court's interpretation, Cascade, could not assess the Associates for production costs during the leaching start-up period or other periods where, due to force majeure events (NR.213), cash flow from production was insufficient to pay the continuing costs of production. Cascade asserts, however, that paragraph 13(c) was not intended to negate the Associates' liability under paragraph 13(b) for the start-up production costs but, rather was intended to protect the sole

proprietor Associates by restricting the Operating Manager from charging for any ore produced which, when sold, was insufficient to recover the production costs. Thus, under Cascade's interpretation of paragraphs 10(a) and 13, Cascade could assess the Associates for production costs until cash flow was sufficient to pay such costs. Cascade could not assess the Associates beyond the gross value of their interests in the minerals mined, milled and removed to the leach pad and their interests in the proceeds which were due from the sale of any minerals. Such interpretation provided a means for the financing of production costs by the Associates through their joint venture during the start-up period and assured later reimbursement of the production costs paid by the Associates during that period (NR.289,Ex.A; Ex. 129).

This interpretation of paragraphs 13(b) and (c) of the JOA is consistent and harmonious with the other provisions of the contract documents. At page 11 of the Confidential Memorandum it states:"

> Liabilities of Purchasers: Purchasers will be generally liable for their ratable portions of certain losses of the Program in excess of their investment, ...."

In addition, at page 20 of the Memorandum, enumerating the Risk Factors generally assumed by a sole proprietorship, it reads:

> "1. General Risks. Each Purchaser will be subject to the risks generally incident to the ownership and operation of mineral properties, as well as changes in general economic conditions, operating expenses, governmental rules and fiscal policies, acts of God and other factors which are beyond the control of the Program. Thus, all of the risks normally

attendant to the operation of a business are present in the extraction of minerals which is the purpose of owning the Working Interest." (emphasis added).

Similarly, page 21 of the Memorandum, states:

"5. Mining Industry - Labor Disruptions. Mining as a business is highly speculative because of the many obstacles which may be encountered in Mining, which may cause delays or require add-itional working capital ...."

Further, at page 23 of the Memorandum, paragraph 6, it reads:

"10. Purchaser's Unlimited Personal Liability. Although each Purchaser will have no personal liability under the terms of the Working Interest Agreement, except for the recourse Royalty Note and the Development Loan, each Purchaser should be aware of the fact that the Working Interests are not limited partnership interests in the property. As the owners of Working Interests, each Purchaser is subject to unlimited liability over and above his investment for matters which might occur as a result of the activities, including operations under the Joint OperatingAgreement...." (emphasis added).

Paragraph 10 of the JOA also imposes liability on the Associate sole proprietors for the operating costs of their mining business above their initial investment. Paragraph 10(a) reads as follows:

"10. Compensation and Expenses of Operating Manager. The Purchasers agree that the Operating

> Manager shall be paid compensation for his services the sum of the following:
>
> (a) Reimbursement of its out-of-pocket costs of management incurred for the Program which shall include...a fair allocation or pro rata share of operating, handling, managing and overhead expenses,....." (emphasis added).

In the Sublease the production and or the results of the lack of production is obviously the liability and obligation of the sublessees. Article 4 states:

> "..in the event Sublessee shall fail to mine, sell and pay royalties with respect to his proportionate share of minerals...by the end of December...Sublessee shall pay...difference between royalties paid and...minimum annual royalty."

Accordingly, the provisions of the contract documents are consistent in demonstrating that the Associates were at risk for expenses associated with start-up production expenses (NR.249,pp.12-24). The trial court's interpretation that the contracts are nonassessable except out of production should be rejected for the additional reason that it defeats the purposes and objectives of the contracts and renders them difficult if not impossible to perform. Stangl v. Todd, supra The clear purpose of the project was the production of minerals at a profit. The Associates acquired a tax sheltered net profits ownership interest in the project and assumed the risks of development and production Miller v United States, 41 AFTR 2d 78-376 (DC Cal.1977) (IRS Regulation 461,465). It was expected the cash flow from production would finance continued production, except during the initial period of start-up production immediately following the development of the property and

during periods where force majeure events resulted in production costs exceeding income from the sale of minerals. In interpreting the contracts to be nonassessable the court found that no method was provided for in the contracts to finance production costs during the start-up and force majeure periods (Finding 104). Consequently with no provisions in the contracts providing for financing start-up production costs and with the Associates unwilling to voluntarily pay such costs the trial court found that the contracts had become impossible to perform. (Finding 116).

The contracts do, however, provide for assessability limited by the value of each Associate's respective interest in the minerals mined and on the leach pad and in the proceeds from the sale of said minerals (Ex.1D, par.10 (a)(b), par.13; TT.416-21;Ex.129). This view renders performance under the contract possible and the purpose achievable by providing a means for the financing of start-up production costs and costs incurred during periods of force majeure events. It would seem only reasonable that sophisticated parties such as those involved in this case would have intended to structure a business plan capable of accomplishing their profitable production objective and would not have intended to enter into a contract which undercapitalized the most important phase of the project (NR.267). As stated in 4 Williston on Contracts, Section 619 (3rd. ed. 1961):

> "...[A]n interpretation which gives effect to the main apparent purpose of the contract is favored:"It is a fundamental rule in the interpretation of agreements that we should ascertain the prime object and purpose of the parties, and in case of ambiguity produced by its minorprovisions, the latter should, if possible, be so construed so as not to conflict with the main purpose...."

Further, at Section 420 of Williston, it reads:

> "...[A]n interpretation which renders the contract agreement valid and its performance possible will be preferred to one which makes it void or its performance impossible or meaningless."

A subsidiary purpose of the contract was the tax benefit from deducting the royalty and development note to be derived by the Associates to reduce the capital risks inherent in a mining venture as stated in the Memorandum (Ex.1.Ex.H,;Ex.1.23). These tax benefits are largely dependent on the requirement that the Associates' be burdened with the cost of development and operation of the property for their net profit interest in the mine operations Miller v United States, supra, and which is absolutely necessary for the Associates to avoid being taxed as a corporation. The Memorandum, sets forth the IRS's view of the required features of a JOA for the holders of net profit interests:

> "(1) The costs of development and expenses of operation are to be prorated among the parties in accordance with their respective interests." (Ex.1H, p.3)

The trial court's interpretation that the Associates are not personally liable beyond their development loan and royalty note obligations, is not supported by the tax regulations for advanced MAR (IRS Code section 465) and defeats the tax benefits contemplated by the contract documents and should be rejected on that additional ground.

Further, under the doctrine of "practical construction", when a contract is ambiguous and the parties place their own construction on the agreement and so perform the

court may consider that construction as persuasive evidence of what the parties intended by the agreement. Zeece v. Siegel's Estate, 534 P.2d 85 (Utah 1975); Bullough v.Simms, 16 Utah 2d 304, 400 P.2d 20 (1965). Indeed, the interpretation given to the contract by the parties themselves, as shown by their conduct, will be adopted by the court. Hardinge Company v.Eimco Corp., 1 Utah 2d 320, 323, 266 P.2d 494 (1954). The principle of practical construction applies to those acts performed before any dispute over the contract arises. United California Bank v. Prudential Insurance Company of America, 140 Ariz. 238, 681 P.2d 390 (Ariz. App. 1983).

That Cascade always understood the Associates were liable for production expenses until cash flow was sufficient to cover such expenses is not only clear from Cascade's Charge Procedure (Ex.40.01) adopted in July of 1981, which was followed by the Mgt. Committee but also from it's first communications with the Management Committee and the Associates after the development loan had been expended. Cascade's April 15, 1982 letter to the Management Committee reported that the development loan had been fully expended and production commenced in March. The letter also informed the committee the production expenses for March totalled over $24,000 or approximately $700 per unit which amount was being invoiced directly to each Associate and that thereafter "the costs of mining will be billed to them (the Associates) in a quarterly basis..." (Ex.41.03,1-2)

Defendant Herbert Stoltenberg, attorney and member of the Associates Mgt. Committees, also understood that the Associates were liable for the production expenses until the project was in full production as is evidenced by payment of his $1,400.00 first quarter assessment on April 21, 1982 after he received the April 15th and 20th letter from

Cascade and other communication with Cascade regarding the assessments. Stoltenberg, admitted and then later attempted to explain away payment of his first quarter assessment by somehow claiming he made it as part of an election to take his gold in kind. However, his May 5, 1982 letter to Cascade clearly indicates that he recognized his liability for the first quarter production costs when he stated that his $1,400.00 payment "...was my share of the production costs for the quarter ended March 31, 1982, and which I paid you in cash on April 21st..." (Ex.131.02)

The July 19, 1982 audit of Cascade's Associate records as accounted for in accordance with the Charge Procedure (Ex.41.01,p.4) conducted by Harmatz and Hodowksi and several other Associates reveals the understanding of the Associates present that Cascade could assess them for start-up production expenses. The purpose of the audit was to verify the legitimacy and amount of Cascade's expenditures (TT.163-82). However, none of the Associates who participated voiced objections to Cascades right to charge the Associates for legitimate operating expenses. Moreover, at the conclusion of the audit, the Associates expressed their satisfaction with the appropriatness of the expenses billed to the Associates and directed Cascade to hold an annual meeting of the Associates for purposes of reporting the status of the project and to assist Cascade in collecting the assessments (TT.173-82). Further, shortly after the July 29 audit, Associates Ashley, Bentz, Waugh, Harmatz and Hodowksi paid their second quarter assessments.

The parties intent regarding assessability was also manifest in the August 14, 1982 meeting of Associates in Las Vegas. At the meeting, Cascade stressed the Associates contractual liability for the assessments. Indeed, Cascade's accountant quoted specific provisions of the contract documents upon which the assessability was based (Ex.93AT

p.39-41). None of the Associates voiced objections to Cascade's right to make assessments under the contracts. Further, Defendant Stoltenberg told Weston and Joseph Green that he intended to pay his assessments (TT.1054,1136). Several of the Associates made partial or full payments of their assessments after the August 14th meeting. These payments were made by the Associates with the full understanding that the project was behind schedule and experiencing cash flow problems.

At the August 25th meeting, the Mgt. committee approved the language of the Mgt. Agreement (TT.211-214,220) which was later signed by a majority of the Associates (NR. 265 Uncontested Fact No.40). That agreement appointed the 2nd Mgt Committee as the agents of the Associates for purposes of directing Cascade in the operation of the mine and in particular to authorize expenditures of the Associates in the mine's operation (TT.1112). Paragraph 3, impliedly recognized the Associates liability for the assessments under the JOA. In paragraph 8 the Associates expressly agree on a pro rata basis to reimburse Cascade for any costs incurred in complying with requests or directives of the Mgt. Committee. Cascade relied on this agreement as confirming the parties understanding of the liability for the assessments under the JOA (TT.216-18). Further, Cascade accepted this agreement as an independent basis for charging the Associates for production costs authorized and directed by the Mgt. Committee (TTA.332-334).

When the subject of assessments came up at the September 13th and 20th 1982 Management Committee meetings, it was in the same context as paragraph 13(c), that the amounts of the assessments should be reduced where the ore mined, crushed and processed by Cascade failed to meet a minimum standard of commercial value.

That the Associates understood that they were obligated to pay the assessments is further evidenced by their Management Committee directive to Cascade contained in Stoltenberg's November 15, 1982 directive to charge the nonpaying Associates 18% per annum interest on the unpaid assessments (Ex.120).

In addition, during the period following the August meeting through November of 1982 Cascade continued to correspond with the Associates and repeatedly emphasized the necessity of paying their assessments. Although some of the Associates questioned the extent of the assessments, none of them expressed the view that the contracts were nonassessable. The only reasonable inference from the continuing silence as to any question regarding assessability is that they understood they were obligated for the start-up production costs if there were shortfalls.

Not until November 29, 1982 did any of the Associates question Cascades' right to assess them for expenses under the contracts. It was at this point that the issue of nonassessability, as developed in this litigation, was first presented. The clear course of conduct by all parties prior to this time demonstrated that the parties viewed the contracts as assessable.

Finally, the Associates' understanding that they were personally liable for the assessments is further manifest by their claiming the 1982 unpaid assessments as deductions on their 1982 Federal Income Tax Returns for their individual mining business. The deductions were taken by all the Associates on an accrual basis even for assessments not paid in 1982. By deducting the unpaid assessments in the year accrued they acknowledged liability for such unpaid assessments. See page 18, supra.

The joint venture Associates, who were not parties to this action, also understood that the contracts were assessable. Each of these Associates have paid, in full, their

assessed production costs.Further, each of these paying Associates submitted an affidavit (NR.267) or testified at trial stating that they interpreted the contracts to be assessable and relied on the non-paying Associates to meet their pro rata share of the production costs at the time they acquired their working interest in order to assure themselves that their mining business interests would not be undercapitalized (TT.1136-37,1140-41). In particular, Harold Masunaga testified when questioned regarding his obligation to pay start-up production assessments (TT.1110-1112):

> "I have read the memorandum. And I know that I was obligated to pay my prorated share...I felt I was like a General Partner where I was liable for all expenses that were incurred during the production..."
>
> "...Cascade as an operator would be taking instructions from the management committee, and the management committee would ask for funds from us to be prorated to the other Associates."

Thus, the conduct of all the parties to the contracts, before the dispute over assessments arose, clearly manifests their understanding that the Associates were personally liable for production costs until cash flow from production was sufficient to cover such costs. The trial court therefore, erred in failing to give effect to that construction of the contract placed on it by the parties.

Even if the court were to find that the literal language of the contract document did not clearly provide for assessing the Associates their share of start-up production expenses, the court should nevertheless hold that such an obligation was implied by the parties. The conduct of the parties and the surrounding circumstances, as set forth above, clearly manifest the parties intentions sufficient to

find an implied agreement that the Associates would pay the start-up production costs.

This case also presents a classical situation for the application of the equitable estoppel doctrine. Because of the acts and conduct of the Associates throughout the period from April to November, 1982, Cascade was induced to incur significant expenses for start-up production for the benefit of the Associates which have not been reimbursed. Cascade relied, to its detriment, on the foregoing conduct of the Associates in continuing to incur expenses and advanced the costs of production.

## II.
## THE TRIAL COURT ERRED IN FINDING THAT CASCADE, BREACHED ITS FIDUCIARY DUTY TO THE ASSOCIATES AND ACTED IN BAD FAITH BY SEEKING REIMBURSEMENT FOR START-UP PRODUCTION COSTS.

STANDARD OF REVIEW: The trial court's findings shall be set aside if found to be clearly erroneous.

The trial court found that Cascade, breached its fiduciary duty of good faith to the Associates by seeking to impose liability on the Associates for the assessments and in bringing an action to collect the assessments. This finding of bad faith was premised by the trial court on the following: (1) that the contracts were nonassessable and start-up production costs were to be paid out of the proceeds of production; (2) that Cascade knew the contracts were nonassessable; (3) that, at some point, Cascade realized that production proceeds during the initial start-up period of production were not going to be sufficient to meet production costs and that the only means for maintaining continued operations at the mine was to seek additional financing from

the Associates beyond their contractual liability; (4) that initially Cascade hoped it could get the Associates to pay voluntarily by falsely representing to them that the project would quickly be in full production and that they would soon be reimbursed for any payments made; and (5) that when the Associates failed to make the payments voluntarily, Cascade devised the theory that the Associates were liable for the production costs under the contracts.

Cascade has set forth its preceding argument that the trial court erred in holding the contracts were nonassessable. As the contracts were assessable Cascade did not act in bad faith in seeking to collect the assessments from the Associates.

Even should this Court uphold the trial court's determination that the contracts are nonassessable, if Cascade's interpretation of such contracts was reasonable there can be no bad faith. As has already been fully discussed, the evidence supports the contention that Cascade understood the agreements to provide for the liability of the Associates for production costs during the start-up period when cash flow was not sufficient to cover such costs. Thus, Cascade did not act in bad faith in seeking to collect the assessments which it reasonably believed were the Associates' obligation.

The trial court's finding that Cascade misrepresented the immediate profitability or cash flow of the project in order to induce the Associates to pay the assessments beyond their contractual liability on the hope of immediate reimbursement from production is unsupported by the evidence. The April 1982 correspondence from Cascade to the Associates and their Management Committee reflected Cascade's expectation that the mine would be in full production during the second quarter. This expectation was reasonable at the time based on the progress at the mine during the first quarter. However, Cascade's correspon-

dence and communications to the Associates from May 1982 and afterward disclose cash flow problems and delays due to force majeure events and, later on, due, in large part, to the Associates' failure to timely pay their assessments despite the delays. Despite these set backs, Cascade continued to believe in the eventual success of the project. Nevertheless, Cascade, in its communications with the Associates fully disclosed the problems experienced during the start-up period (Ex.93AT).

That Cascade continued to maintain a good faith belief in the success of the project as late as mid-1982, is manifest when Cascade's chief officer, W. David Weston, on July 29, 1982, offered to purchase Chris Waugh's interest in the mine and for that purpose tendered to Waugh a cashiers check for $29,000 after mortgaging his home (Finding 97). In addition, Cascade in 1982 purchased 5 defaulted units and paid the MAR, assumed the development note obligations and paid its full pro rata share of the production assessments (NR.313,Exhibit A(4),p.16 ledger account No.3000).

A further indicator that Cascade's good faith belief in the eventual profitability of the mine continued throughout 1982 was Cascade's commitment of it's own credit and resources to provide working capital until it received reimbursement from the quarterly billings to keep the mine in operation throughout 1982 Finding Nos.101, 105). As late as July 30, 1982, Cascade, in its own name, borrowed $35,000 from Zion's First National Bank which Cascade put into the project. Further, on or about August 31, 1982, Cascade applied to the project approximately $30,000 which were the proceeds from the sale of certain real property owned by Cascade. Similarly, in December of 1982 Cascade put another $53,000 into the mine operations which Cascade had received from the sale of another piece of realty owned by Cascade.

Cascade's willingness to commit its own credit and resources to the project throughout the year 1982 not only indicates Cascade's good faith in the profitability of the mine, but also, its understanding that the agreements were assessable and that Cascade would be reimbursed quarterly for its services and direct expenditures as the Operating Manager. Moreover, Cascade's continued faith in the ultimate profitability of the mine was supported by mining engineer Martin Hughes' report to the Associates in October of 1982 to the effect that delays, such as those experienced at the Telegraph Mine, were not uncommon and that if the Associates would support the project it was at the point that it would be very profitable as follows (Ex.229):

> "This project has been initiated in a very good and effective manner. If, properly supported, it is now at the point of consistent operation and good results."

Even should this court uphold the trial court's determination that Cascade acted in bad faith, there remains the important issue of when the bad faith occurred. The timing of the bad faith is significant in that if the bad faith occurred after the Associates made their assessment payments, Cascade should not be required to make restitution for such payments to the Associates.

The trial court's Findings on the timing of the bad faith, are inconsistent. In Amended Findings No. 97 and 117, the trial court specifically found that Cascade and it's chief officer David Weston acted in good faith at least up through November 1982 as evidenced by: (1) Cascades advancing of it's own funds and resources to keep the project going; (2) Weston's offer to buy Waugh out; (3) "many other circumstances shown by the evidence".

Weston's offer to buy Waugh out occurred on July 29, 1982 and Cascade and others continued to commit their credit and resources to the project until December 1982. However the court in it's findings, focused on November 1982 as the period in which Cascade's bad faith commenced. The Courts finding specifically stated:

> "...By November 1982,...Cascade had in effect suspended mining operations and reported to the Associates that the property was...on a maintenance basis...From that point Cascade's efforts turned from managing the mine within the intendements of the agreements with realistic hope of producing the expense of operation at a profit, to a program simply to compel the Associates to make unwarranted contributions for an indefinite period of time for which they were not bound." (Finding No. 117)

Nevertheless, in Finding No. 18 of the accounting hearing findings (NR.336) (hereinafter "AFinding"), the court specified July 28, 1981 as the date when Cascade's bad faith commenced.

At the accounting hearing the trial court misinterpreted some of the testimony presented at that hearing concerning Cascades reliance on the Mgt. Agreement (Ex.98) as a basis for making the assessments (TT.282-287,331-332). Although, Cascade had taken the position throughout the course of the lawsuit that it had relied on the terms of the Mgt. Agreement in assessing the Associates for some of the production expenses, the court, perceived this as a new position, not previously asserted by Cascade (which would defeat the court's earlier award of restitution of the assessments paid in 1982) and was influenced to make the finding that the bad faith had commenced at an earlier date (AFinding Nos. 15,16,17,18).

The record, indisputably reflects that Cascade, from the commencement of the action, relied, not only on the JOA, but also on the Mgt. Agreement in assessing for production expenses after the date of the Mgt. Agreement. Such position is reflected in Cascade's complaint (NR.27,p.21), to which a copy of the Mgt. Agreement was attached as an exhibit, in early correspondence (Ex.129), in Cascade's motion for Partial Summary Judgment (NR.249;NR.250;NR.254) and in Weston's testimony at trial (TT.214-218,244,279) and earlier by the court (TT.pp.81-84 March 26, 1985).

Thus, the trial court's perception that Weston was attempting at the accounting hearing to take a new position with regard to the significance of the Mgt. Agreement in order to avoid the trial court's findings that the Associates were nonassessable is not supported by the record. The court's finding of the July 1981 date for commencement of bad faith is inconsistent with the court's other findings that Cascade's good faith continued up until November of 1982.

Accordingly if this court upholds the finding of bad faith, Cascade submits that such bad faith did not commence before November of 1982 as Cascade continued to commit it's resources and credit to the project up until December of 1982. Therefore, Cascade should not be required to make restitution to the Associates for assessments paid prior to that time. It is indeed ironical that so many inconsistencies exist in the bad faith findings while the implication of such findings permeate so much of the award of damages ordered by the trial court. ...

Dated this 13th day of March 1987.

Respectfully Submitted

by Steven W. Snarr Esq.
Michael E. Talbot

**IN THE SUPREME COURT OF THE UNITED STATES**

---

October Term, 1990

W. DAVID WESTON
Petitioner/Appellant

*v.*

JEFFREY G. BANKS ET. AL.,
Defendants

---

**PETITION FOR WRIT OF CERTIORARI**

---

**APPEAL BRIEF OF CROSS-APPELLANT THE GNOLAUM UNITRUST**

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**UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**
CASES NO. 86-1202, 86-1156, 86-1157

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CASCADE ENERGY AND METALS CORPORATION

Plaintiff/Appellee
and cross-Appellant

vs.

JEFFERY G. BANKS, etc., et.al.,

Defendant/Appellant
and cross-Appellee

---

CROSS APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF UTAH
THE HONORABLE SHERMAN A. CHRISTENSEN,
JUDGE

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# BRIEF OF CROSS-APPELLANT THE GNOLAUM UNITRUST

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## STATEMENT OF ISSUES

1. Did the trial court err in determining that the defendants as Gnolaum's joint venture partners did not breach their fiduciary duty to Gnolaum by holding that the sublease working interests of the Associates were not assessable for start-up production expenses beyond the proceeds of the development loan and in not awarding damages to Gnolaum against the defendants for undercapitalizing Gnolaum's mining business by not dealing candidly, openly and fairly with Gnolaum in good faith.

## STATEMENT OF FACTS

Gnolaum Unitrust hereby adopts the Statement of Facts as set forth on pages 2 through 21 of the brief of cross-appellant Cascade Energy and Metals Corporation and the Statement of Facts as set forth on pages 1 through 9 of cross-appellant Telegraph Mine Limited as well as Rex Montis and incorporates the same herein by this reference.

The Gnolaum Unitrust ("Gnolaum") was organized in Utah on April 21, 1971. David and Vicki Weston are Primary Beneficiaries and their eight children are secondary beneficiaries. Each of the beneficiaries own Unitrust certificates as a result of individual cash and property contributions. Mr. Weston owns 21.7% of the trust and the balance is owned by Vicki Weston and their children. James F. Peters is the Trustee. Mr. Peters is also a director of Cascade and Rex Montis. The Gnolaum Unitrust controls 32.85% of Cascade a public company; 14.27% of Rex Montis (Utah) formed in 1969 out of Rex Montis (California) wherein Harmatz, Hodowski, Waugh, Stoltenberg and Donahey were principal shareholders (Trial Transcript ("TT") page 2102-3); and 77% of Interphase Corporation organized in 1965 (Utah) with 17 shareholders.

Telegraph Mine Limited was organized in 1976 and Gnolaum owns 30 units (10%), Interphase owns 35 units (11.66%), Weston owns 16.7 units (6%), Rex Montis owns 25 units (8.3%) and Cascade is the General Partner. In 1980 Gnolaum gifted 30 units and Weston gifted 10 units to the LDS Church. Weston, Harmatz, Hodowski and Waugh were involved in various purchases of Telegraph Mine lease interests such that in September of 1980 the Prime Lease was owned by the Telegraph Mine Joint Venture ("TJV") comprised of Telegraph Mine Ltd 60%, Rex Montis 30% and Gold Technics Ltd. (California) 10%. Weston, Harmatz and Hodowski governed the TJV and initiated, formulated, planned and approved the Telegraph Mine Associates sub-

lease project ("Memorandum" Ex.1; TT.1220: Williams deposition ("WD") pp. 92,106).

Harmatz and Hodowski introducing Weston to Williams, an attorney who had created at least 7 other mining ventures like Telegraph Mine Associates (WD.pp.43,47,64, 91, 92). Gnolaum in December of 1980 reacquired an interest in the Mine by purchasing a 1/35 Sublease working interest and paid a Minimum Annual Royalty ("MAR") of $74,285 in 1980 and 1981 with $30,000 cash ($60,000) and executing two $44,285 recourse notes ($88,570).

Harmatz and Hodowski C.P.A's as co-promoters sold their clients (WD.p.110) and along with Waugh and Stoltenberg received commissions and served as advisors and decision makers for their client Associates.

The purchasers ("Associates") including Gnolaum associated themselves as joint venture partners (WD.pp. 104-5) by the terms of page 1 and sections 5, 13, 15, 19, 23 and 24 of the Joint Operating Agreement ("JOA" (Ex.1D) and page 1 and sections 2, 8, 10 of a later Management Committee Agreement (Ex., to capitalize and conduct their mining business. Accordingly, Gnolaum relied on it's joint venture partners to 1) obligate themselves for $800,000 loan for development expenses (Ex.1D,2(h),4); and (2) to pro rate the costs of production to the point where income would exceed expenses (Ex.1D,13(b); (3) govern themselves by the decisions of a majority-in-interest (Ex.1D,15); and (4) hire a contractor to develop the mine and conduct the day-to-day operations on a "best efforts" basis (Ex.1D,4 & 13,8,11). The Associates majority would direct the contractor and adjust their individual business accounting records maintained by the Contractor in their behalf. Each Associate had a fiduciary duty to the others to deal openly and fully disclose all material information regarding the mine project (TT.768; Ex.1D,15,24).

The contract documents provided that a majority could fire the contractor and rehire another to manage the mine (Finding ("F")48). The contractor was not hired for a "fixed fee," but, performed it's ministerial functions using it's "best efforts" (F.93) and billing the Associates pro rata for it's costs according to a Chargeable Cost Procedure adopted by a majority (Ex.40.01). The Associates contracted with Cascade ("Contractor") to perform the ministerial duties of operating manager (Ex.1D,2).

Gnolaum, became an Associate to make a profit and expected to tax deduct the MAR and operating expenses to reduce the risks inherent in a start-up mining operation. Gnolaum looked to it's joint venture partners to share the costs necessary to produce a positive cash flow so it's business would not be undercapitalized as it's limited resources were not sufficient (TT.121; 769; 1108-11; 1393).

Gnolaum was provided a tax opinion and pro forma projection setting forth the requirements for the tax deductions (Ex.1H). Initially production was to be derived from a proposed underground mining plan to begin in October of 1981. A majority in July 1981 authorized a complete change in the mining plan to consist of an interim "scalping operation," mining the vein surface and recovering gold by "heap leaching," to be followed by underground mining (TT.447; 621; 682; 750-51; 954; 981; F.42).

On September 24th of 1981, Waugh, Stoltenberg and Hodowski formed a 1st management committee ("committee defendants"). Thereafter, the committee defendants took control and spent Gnolaum's development loan funds until depleted in March of 1982; approved the contractor's work orders, budgets and accounting in each month (TT.116-20; 493; 1045-47). In late March of 1982 the committee defendants received a final accounting of the development fund expenditure from Cascade (Ex.86; TT.137-33; 156-59). Production started using significantly

different methods than was proposed in 1980. Cascade gave the committee defendants and Associates notice it would thereafter bill the Associates for production costs in each quarter (TT.135). The committee, without notifying or reporting to Gnolaum terminated the committee and made a final inspection of the mine in May 1982 (TT.159-61). Following their inspection the committee knew there was not sufficient ore produced at that time to provide a positive cash flow (Ex.88;TT.138).

Thereafter, on July 29th 1982, Associates Waugh, Harmatz, Hodowski, Ashley, Bentz and Smith made an audit review and passed upon the contractors accounting which supported the amounts then assessed for production costs (TT.173-77). These Associates directed Cascade to convene an Associates meeting (Ex.93A.) to explain the need for further production assessments (TT.165-72) and to allow Waugh and Hodowski to organize a new management committee to govern Gnolaum's mining interests (TT.183-86). The 2nd committee was composed of Associate defendants Waugh, Hodowski, Stoltenberg (secretary), Ashley (vice chairman) and Associates Bentz (Chairman), Smith and Green with defendant Harmatz acting as an alternate (Ex.93A, pp. 55-56). A new agreement called "Resolution Management Committee Agreement" (Ex.98) was adopted by a majority (TT.143). This agreement gave committee defendants express authority to direct the operator to pro rate the operating costs among the Associates (Ex.98.pg.1,par.2,3,8,10). At all times Gnolaum relied on the committee defendants to protect it's mining business interests (Ex.1D.par.15).

Gnolaum paid all of it's pro rata share of the mine's production costs amounting to $25,389. The committee defendants at all times acted like and ofttimes stated they were going to pay their production costs. The committee defendants never gave Gnolaum notice they did not intend

to pay these costs (TT.177-82), or an accounting of their fiduciary management of Gnolaum's mining business through November of 1982 (TT.1109).

When Gnolaum and others attempted to divide the property to protect their interests in December of 1982, Stoltenberg threatened them (F.65) and in March of 1983 the committee defendants obtained an injunction (Ex.910; TT.428-29; 1112-13; 2719-22), encumbering Gnolaum's interest (Ex.1D.15) stopping any hope of achieving a profit from it'sinvestment. Gnolaum first participated in an action brought by Associate Plaintiffs' against the defendants in the Utah State Courts Bentz v. Stoltenberg, No. C83-2189. Gnolaum entered this dispute on April 16, 1984 when the defendants named Gnolaum as a party.Thereafter Gnolaum filed it's cross claim against the defendants alleging Breach of Contract, Breach of Partnership Duty, Breach of Fiduciary Duty, Fraud and Tortious Interference with Business Relationships against Harmatz, Hodowski, Waugh and Stoltenberg. The trial court, though it recognized the claims (F.15) substantially ignored Gnolaum's claims and addressed them in only two conclusory findings and therein dismissed such claims in total (F.110;F.128;Conc.Law.9; TT.1082-87).

1. Did the trial court err in determining that the defendants as Gnolaum's joint venture partners did not breach their fiduciary duty to Gnolaum by holding that the sublease working interests of the Associates were not assessable for start-up production expenses beyond the proceeds of the development loan and in not awarding damages to Gnolaum against the defendants for undercapitalizing Gnolaum's mining business by not dealing candidly, openly and fairly with Gnolaum in good faith.

STANDARD OF REVIEW: The trial court's findings shall

be set aside if not supported by substantial evidence and found to be clearly erroneous. Fed. R. Civ. Proc., Rule 52(a). Federal Security Insurance Company v. Smith, 259 F.2d 294.

The trial court erred in ignoring the claims of Gnolaum as each defendant had a contractual and fiduciary duty to support the mine project. But, in not paying the production costs the defendants breached the contract documents and their fiduciary duty as joint venturers by undercapitalizing Gnolaum's mining business, jeopardizing it's profit potential and tax basis (TT.1123; Ex.1D.pg 1, par.9,10,13,15,24; Ex.98. par. 2,5,7,8,10).

Gnolaum fulfilled it's obligations to it's joint venture partners by contributing all it's share of the production costs. The defendants observed, benefited from and encouraged Gnolaum's payments for over a period of nine months. The trial court erred in not applying the equitable doctrine "equality of burden as to a common right is equity" which provides:

> "that where two or more parties have assumed in company with each other, the whole of a liability, and one of the parties has paid the whole he has a right to recover from the others their pro rata share of the amount so paid by him. His right to receive and their duty to pay such share are comprehended with the term "contribution" This is an equitable right growing out of the relation of the parties and the law attaches a duty and implies the promise to contribute." Funiak, Handbook of Modern Equity, (2d. ed. 1956), Prentice Hall pp.237-238.

That Cascade and Gnolaum knew the contracts were assessable and that such interpretation was not unreasonable is set forth in Cascade's appeal brief on pages 21

through 40, which is incorporated herein by this reference. Gnolaum also adopts the arguments of Telegraph Mine Limited's appeal brief regarding the error of the trial court in misapplying some standards of equitable jurisdiction while ignoring other applicable equitable principles and the assessability of the contract documents as set forth on pages 9 through 14 and incorporated herein by this reference.

The trial court erred with regard to it's findings No. 28, 57, 59, 60, 67, 80, 101, III-C, 103, 109, 118, Conclusion of Law No. 6 & 7 and Accounting Finding 34 by not finding that Gnolaum reasonably interpreted the contract documents to require pro rata assessability for shortfalls from production as a condition for it's investment in the project in view of the risks. Gnolaum reasonably relied on the Associates mutual liability and later the committee defendants (WD.111) to assure that it's mining business would not be undercapitalized, encumbered or impaired (TT.1113, Ex.194; TT.1119; WD.112). The court erred in arriving at it's conclusions by not recognizing that the Associates, not Cascade, were the principal parties to the JOA (Ex.1D, pg.1) defining the partners working relationship and liabilities each would assume in support of the other to assure the mutual success of the project. The Associates hired Cascade to administer the affairs of the Associates and served only a ministerial function at the behest of the Associates as Cascade role in this capacity could be terminated and replaced as evidenced by the committee defendants intent in September of 1981. Cascade, according to it's Chargeable Cost Procedure (Ex.40.01) performed it's obligations to Gnolaum in invoicing to cover the costs required to bring about a positive cash flow only where the value of the ore mined and ore in process exceeded such costs (Ex.1D,par.10(c) & NR. 289 Ex.A).

The court erred in apparently adopting the statements of non-assessability made by Stoltenberg as evidenced by a letter the court quoted from Stoltenberg to Hodowski's clients dated Dec. 10, 1982 (Ex.131.08; F.64-65). This letter was written after the committee defendants believed and acted for over a period of nine months ending December 2, 1982 (F.63) as if the contract documents provided for assessability. Prior to sending the letter these defendants stated to Bentz, Green (TT.1136) and Weston (TT.297,300,302-3) that they would pay such assessments which caused Gnolaum to also so believe (Ex.131.04; F.62). Harmatz and Hodowski then paid, but stopped payment on their check. Stoltenberg asked Cascade to submit to him a note for his production costs in accordance with a 2nd Committee directive he drafted in October 1982, requiring an 18% interest charge on unpaid assessments (Ex.120). Thereafter, Stoltenberg failed to return the note (TT.298-99).

The committee defendants excused their bad faith conduct in a December 10th letter to Associates (F.65) by quoting Williams:

> "he intentionally included the non-assessment provisions for the protection of the Associates, as he has done in other mining venture agreements he has drafted"

It is apparent that Williams had forgotten on December 1, 1982 that of the 7 JOA he had prepared all were identical with the exception of the Associates JOA which was prepared at the direction of Cascade acting for the TJV executive committee (TT.1034; WD.51-55,58-59,111).

It is well understood in the construction and mining industry that construction and development contracts are either "fixed" contracts requiring the contractor to be at risk

for all funds required to bring a project to completion, or "best efforts" contracts wherein the contractor is hired on a cost plus basis and the liability for completion of the project is that of the owner. That the quoted statement attributed to Williams is clearly in error with regards to the Associates JOA are the "best efforts" terms of the agreement:

> "Development Expenses: ...the Operating Manager has agreed to perform the tasks necessary to develop the property, on a best efforts...to get the property into production, there can be no assurance that additional funds will not be required."(Ex.1.pg.12)(Emphasis added)

> "1. Authority of the Operating Manager: ...The Operating Manager shall perform such duties for the account of, and for and on behalf of, the purchasers, using its best efforts in so doing..." (Ex.1D,par.1)(Emphasis added)

> "4. Duty of Operating Manager to Develop the Property. The Operating Manager hereby agrees to perform such duties, using its best efforts, skill and judgement to make all installations necessary to place the property in a condition to produce therefrom. ...the operating manager, however, does not guarantee results."(Ex.1D,par.4)(Emphasis added)

which are considerably different from the "fixed fee" terms of William's 6 other JOA agreements (WD.110).

> "Development Expenses: Pursuant to the Joint Operating Agreement, the Operating Managers have agreed to perform the task necessary to develop the property... The Operating Managers will be compensated by a fixed fee... They will be

liable for any costs...in excess of the fixed fee." (Ex.614,615,616)(Emphasis added)

"3. Duty of Operating Manager to Develop the Property. The Operating Managers hereby agree to perform all tasks necessary to place the property in a condition to produce ore for a fixed fee..." (Ex.614,615,616)(Emphasis added)

Clearly it was intended in the Telegraph JOA that the Associates were liable for shortfalls in production and not Cascade who had no liability. Both the criteria for adequate business capitalization and economic feasibility as required by the IRS are met in the Associates JOA as well as William's JOA, but the later through the contractors fixed contract and the former by virtue of the Associates mutual liability up to the value of the ore produced (TT.420). The defendants knew that meeting this criteria was a critical and integral part of the success of Gnolaum's mining business investment. Yet, the committee defendants failed to notify Gnolaum of their intent to not pay the production costs and refused to invoke arbitration as required by the JOA to settle the dispute when it arose (Ex.1D,par.24).They knew time was of the essence and arbitration as provided was appropriate. As a result of the bad faith conduct of the committee defendants, Gnolaum is now required to pay additional and therefore excessive, start up production costs to protect the capital it has invested (Ex.898;914;117 TT.2713-18). ....

Dated April 16, 1987 Respectfully Submitted

Delwin T. Pond, Attorney for
the Gnolaum Unitrust

**IN THE SUPREME COURT OF THE UNITED STATES**

---

October Term, 1990

W. DAVID WESTON
Petitioner/Appellant

*v.*

JEFFREY G. BANKS ET. AL.,
Defendants

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**PETITION FOR WRIT OF CERTIORARI**

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**EXERPTS FROM TRIAL EXHIBITS 128, 129 WESTON'S "CONSTANCY AMID CHANGE" MEMORANDUM DATED DECEMBER 14, 1982, INTERPRETING ASSESSABILITY PROVISIONS OF JOINT OPERATING AGREEMENT**

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**(Letter)**

Cascade Energy and Metals Corporation
6101 South 900 East
Salt Lake City, Utah 84121
Telephone (801) 263 3610

December 14, 1982

Coastal Computers Investments
896 Monterey
San Luis Obispo, California 93401

Re: Letter of November 29, 1982
Interpretation of Contract Provisions
"Constancy Amid Change"

Dear Larry and Ron:

There have been many conflicting voices that have attempted to disrupt and redirect the Telegraph Mine program ... To whom does one listen? May I suggest that our objective as the Operating Manager is singular and CONSTANT, that is, to pursue the program at the Telegraph Mine as set forth in the Confidential Memorandum along a straight and narrow track leading to sustained production.

...To provide constancy and order to the present confusion, I am setting forth in an attachment to this letter, the meaning and intent of the memorandum and operating agreement as that applies to the payment of production expenses. I originally rewrote and approved of the language and the intent of these controlling documents.

The changing issue before us now is whether or not the Associates owe the start-up production and continuing production costs accumulating since March of 1982. In addition, whether some of the Associates, through directing the non-payment of production funds, have encumbered the investments and rights of other Associates.

Several Associates have addressed the heart of the problem with the very simple logic that states: without production, there is no program....

Therefore, I have set forth in the attached document (opinion letter) the interpretation of the original intent of the program documents, that you might come to your own conclusion as to where you stand in your relationship to the financial commitments you have made to the program...

Kindest regards,

CASCADE ENERGY AND METALS CORPORATION

W. David Weston
President

(Weston's Opinion Letter)

December 14, 1982
CONSTANCY AMID CHANGE
"An interpretative opinion"

STATEMENT OF FACT

The purpose of the Telegraph Associates mining program: Production is the basic intent and single purpose of the Telegraph Associates mining program.

Without production, the program is defeated, and the Associates investment is lost. Without production, the tax shelter is also defeated. Without production the sublessors will receive no earned royalty.

In order to arrive at a state of production, there is of necessity a development and construction period that is also referred to as pre-production. This period was funded to organize the facilities and prepare the physical plant for the commencement of production.

Following development there is a period known as start-up production which is a part of the production process and during which period the Associates assume almost unlimited liability because of the attendant risks required in paying start-up production expenses. Thereafter production in place where the program produces at a rate and in an amount sufficient to pay the costs of production and produce a profit culminates the program. On page 20 under title of risk factors it states:

> "...the extraction of minerals ... is the purpose of owning the working interests."

**DEVELOPMENT AND PRODUCTION AS TWO SEPARATE AND DISTINCT PHASES WITH DISTINCT PROVISIONS FOR FUNDING.**

The Telegraph mine documents ...speak of Development (pre-production) and Production as two separate and distinct phases, identified as follows:

I. Development - to engage in development of the property funded with $800,000, ...for which the Operating Manager was specifically instructed as to expenditure ...and for which he was to receive a construction management fee. This phase is also called pre-production which means, "before", "prior to" or "in advance of" production.

II. Production - to engage in production by removing the minerals in the property, this phase of the program was unfunded in the beginning, the costs of which carry an unlimited liability to each Associate ...

A. The production phase, is further divided into two subcategories, (i) start-up production, the costs for which are to be reimbursed from future excess cash flow - the risks associated with the costs for which are an unknown. (ii) cash flow production.

B. Start-up production costs in the mining industry are subject to many variables and were left open-ended in the Telegraph program with the anticipation that cash-flow recovery would occur rapidly enough to offset early cash-flow arrearage (start-up production costs deficits). Because of the risk and uncertainty in start-up production, the program and Operating Management Agreement speaks to the "best efforts" of the Operator. Full production is funded out of cash flow from the sale of product or the program is not economically viable.

In the following references to the $800,000 loan, which was specifically not to be used for production, the absence of the word "production"... is conspicuous, and all

references are to "development" which word is highlighted by the addition of the word "construction".

> "... the loan of $800,000 made by the Sublessors on behalf of the program for the development expenses. (page 2 "Terms of Offering" Summary Sheet)
>
> "... the Sublessors intend to lend, for the development of the property ...$800,000 to cover pre-production costs" (i.e. before production - see page 2)

The Operating Manager was to receive 2% of the $800,000, which was called a "construction fee"

> "...in the amount of 2% of the actual pre-production expenses as a development/construction management fee" (see page 3 "compensation summary sheet").
>
> "The Operating Manager has agreed to perform the task necessary to develop the property... The Operating Manager will be compensated for its expenses up to and including the sum of $800,000 ...which will include a construction management fee of 2%.

These development expenses could be identified and thus were budgeted.

> "The Operating Manager believes that $800,000 is the maximum which will be required ...for the initial development work." (see page 12)

In summary the $800,000 was not available for start-up production expenses.

**PRODUCTION COSTS WERE SPECIFICALLY TO BE PAID BY THE ASSOCIATES AS AND WHEN CALLED FOR AS A REIMBURSEMENT OF THE OPERATOR'S EXPENSES.**

The possibility of an additional call for funds for start-up production should have been anticipated by the Associates. Under the risk section of the Confidential Memorandum the Associates were put on notice.

> "To get the property into production, there can be no assurance that additional funds will not be required." (See page 12)

Required for what? For start-up production...

The Joint Operating Agreement is specific in describing the dual concept of initially funded development, and production to be funded as and when required, and which production, at least in the start-up phase, carried an unlimited liability for the Associates. The description of the Joint Operating Agreement (See page 50 of the Memorandum), provides (1) development has a funded amount of $800,000; and (2) production is not initially funded and carries an unlimited liability to the extent that purchasers (Associates) may halt production and its expenses. The description states:

> "DEVELOPMENT OF PROPERTY. The Operating Manager will ...develop the mine to the point that it may be placed into production. ...The Operating Manager will receive a construction management fee of 2% up to the sum of $800,000.
>
> "MINING OF PROPERTY. Each purchaser ...may have minerals delivered to him ...subject to

paying any of the expenses which may occur in ...producing said minerals."

**JOINT OPERATING AGREEMENT PROVIDES:**

In the Joint Operating Agreement the second Whereas clause, a preamble of the program re-states that in separate and distinct parts the program will:

1. "Be engaged in the development of the property," and

2. "...the production of gold and silver ...from the property."

The third Whereas clause provides for the pre-production costs of development to be funded by $800,000. This clause is limited by Article 2(d) which limits the Operator from expending these funds for other than development costs.

It is clear that these two phases are separate and these funds were not to be used for production.

Article 2(d) cited above and Article 4 thereof beg the question particularly were the duties and requirements of development as set forth in Article 4 through expenditures of funded development do not mention mining costs, which wording is again conspicuously absent - where do the funds come from for start-up production? The most critical step of the production phase.

**UNDER THE OPERATING AGREEMENT THE ASSOCIATES HAVE UNLIMITED LIABILITY TO PAY FOR PRODUCTION EXPENSES WITH TWO MODIFYING EXCEPTIONS**

To provide for harmonious construction of the Joint Operating Agreement and program documents in regard to the liability to pay production expenses, under Risk Factors

page 23 of the Confidential Memorandum it states under the heading PURCHASERS UNLIMITED PERSONAL LIABILITY:

> "...each purchaser is subject to unlimited liability over and above his investment." (i.e. money paid on royalty payments and the $800,000 development loan)" for ...matters which might occur as a result of the ...start-up production et al) operations under the joint operating agreement."

The above section is specific that under the joint operating agreement each Purchaser has unlimited liability for production expenses because production is the pure purpose of the agreement. ...

**WHAT ARE THE EXCEPTIONS TO THE ASSOCIATES UNLIMITED LIABILITY FOR PRODUCTION EXPENSES.**

**Exception 1**. The obvious method is for the Associates to direct the Operator to stop mining (production) operations. The Operator can only elect this option (stop production) when it is determined that the program is not economically viable (i.e. it costs more to produce the commodities than they can be sold for).

This alternative is addressed in "Risk Factors" section of the Confidential Memorandum page 21 as follows:

> "The purchasers may be unable to meet all their obligations and may determine to stop mining operations. In such event each purchaser runs the risk that because of his inability to pay his fixed obligations on his note, he may forfeit his working interest in the property. If such event did occur the purchaser would lose his entire investment and might suffer a taxable gain."

This section of risk disclosure also amply provides a statement as to why the Operator would only engage in start-up production on a best-efforts (without personal liability for start-up production costs) basis.

> "Mining as a business is highly speculative because of the many obstacles which may be encountered in mining, which may cause delays or require additional working capital ... Therefore, the purchasers may not realize their projected projections ...or cash flow."

**Exception 2.** To provide a mechanism to establish that mining production was economical, as carried out by the Operator, the Joint Operating Agreement in Article 13(c) provided:

> 'The Operating Manager shall have no authority, express or implied, to ...subject the purchasers ...to any liability in excess of the Purchasers respective interests in the minerals mined, milled and removed from the property and their interests in any proceeds from the sale of said minerals." (note the absence of the word "sold" i.e. mined, milled and sold).

This statement restricts the Operator during production from producing ore which, following production, will not, from the minerals when (future) sold recover the costs of production.

Let me illustrate this point from the current instance. As of the end of June (the 2nd quarter billing), there was represented to be produced, as taken from the production records, a total of 4,743.90 tr/oz of gold which had been mined, milled and/or removed from the property (i.e. avail-

able for extraction). The then available interest from the sale of said minerals following leach extraction would be approximately $1,252,389. The liability to which the purchasers were subject was the operating expenses to that date of approximately $322,000. Thus, the purchasers were not subject to a liability in excess of the Purchasers (Associates) respective (economic) interest in the minerals.

If on the other hand, the minerals mined, in which the purchaser had an interest had a respective value for example of $150,000 then the liability of the Associates to the Operating Manager could not exceed $150,000 and the Operator would have had to take a loss of $182,000 because of the poor judgment exercised in mining ore at a greater cost that the ore was worth.

Clause 13(c) protects the purchaser (associate) by assuring a value in the ore produced equal to or greater than the cost liability he is exposed to in producing the ore. This is especially important during the start-up production period where production expenses increase faster than the physical ability to remove and sell the gold produced. This is why the clause states "mined, milled," (and available for extraction), and not "mined, milled," (and sold). ....

**ARTICLE 10 PROVIDES FOR PRODUCTION EXPENSE LIABILITY AND REIMBURSEMENT**

As the program sets apart the pre-production development/construction phase from production so as to treat them as two separate programs, so does the operating agreement set apart the respective charges and compensation for these two separate and distinct segments of the program. This is accomplished in Article 4 and Article 10 respectively.

Article 4 provides not only for the duties of the Operating Manager during the development period, but also supports the chargeable cost base of the Operator

during this period by providing for the itemized basis of charges including office support and general administration. Therefore, Article 10, not to be redundant, deals with compensation of Operator during the production phase. The language of Article 10, subparagraph (b) speaks of compensation in full of 5%, which is compensation for production. Compensation in part (full is the sum of all its parts) is then set forth in subparagraph (a). Therefore (b) is a compliment to (a) and thus (a) speaks of production charges. Even subparagraph (c) to be consistent speaks only of compensation from production. The 2% management fee mentioned therein is to be received from production. It is interesting to note that Article 4 does not mention the 2% construction management fee. Why? Because it would be inappropriate as it is to be paid out of production expenses - Article 10.

Where else in the entire document is there a provision for the costs to cover the very purpose of the agreement - production, no where else but in Article 10.

. . . .

Prepared by
W. David Weston

**IN THE SUPREME COURT OF THE UNITED STATES**

---

October Term, 1990

W. DAVID WESTON
Petitioner/Appellant

*v.*

JEFFREY G. BANKS ET. AL.,
Defendants

---

**PETITION FOR WRIT OF CERTIORARI**

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**EXERPTS FROM "PUBLIC LAND AND MINING LAW" TEXT AND CASES BY LOREN L. MALL J.D., THIRD EDITION, BUTTERWORTH (LEGAL PUBLISHERS) INC.**

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"**(c) Development of Mineral Deposits.** Exploration work continues until general knowledge has been obtained of the shape, size, general geological characteristics, and average depth and grade of an ore deposit or oil and gas formation. Thereafter, a decision may be made to study the technical and economic feasibility of producing the deposit. All the steps after exploitation and before production of minerals which are taken to block out, or define, the mineral deposit and to open a mine or oil and gas field are properly known as development or exploitation work.

Extraction and processing require varying amounts of investment. For coal, substantial investment may be

needed for a mine, but little processing is required other than crushing and occasionally some mixing of various types. For oil and gas deposits, the production equipment includes pumps, field pipelines, and additional wells as well as such heavily capital intensive operations as regional pipelines and refineries. Additional expensive secondary or tertiary field recovery methods may also be warranted. Once an oil and gas hole is drilled for exploration, however, it may also serve as the ultimate access means for withdrawing production.

For hardrock deposits, substantial investment is usually required for both extraction and processing. Ore may consist of 99 percent waste minerals by weight. In addition, it may be necessary to remove many times more waste rock than there is ore. Waste rock may be valueless either because it is insufficiently mineralized or contains exotic ore minerals which cannot be processed with the bulk of the ore. Both the waste minerals and the waste rock from the ore must be disposed of in acceptable fashion. Then, once the ore mineral is concentrated, it must usually undergo additional processing in order to isolate the actual useful element sought.

Production of mineral may be by any one of the several general mining methods. These include surface mining, underground mining, and in situ(in place) mining by either solution leaching or retort processes.

There are several surface mining techniques. Open pit mining is more complex than simply digging a hole in the ground, placing the overburden aside, and exposing an ore body below the surface which is then produced. The grade and tonnage of the ore determine how much waste rock can be economically stripped, removed, and usually replaced after the ore is extracted. The extent of the pit depends more often on the costs of removing the overburden than on a sudden change from mineral to nonmineral material."

**IN THE SUPREME COURT OF THE UNITED STATES**

---

October Term, 1990

W. DAVID WESTON
Petitioner/Appellant

*v.*

JEFFREY G. BANKS ET. AL.,
Defendants

---

**PETITION FOR WRIT OF CERTIORARI**

---

**AFFIDAVIT OF W. DAVID WESTON AND EXHIBIT OF GOLD PRODUCTION A PART OF REHEARING BRIEF OF CROSS APPELLANT W. DAVID WESTON AS SUBMITTED TO TENTH CIRCUIT COURT OF APPEALS**

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
CASES NO. 86-1156, NO, 86-1157, NO 86-1202

---

CASCADE ENERGY AND METALS CORPORATION
a Nevada corporation

Plaintiff and Respondent,

vs.

JEFFERY G. BANKS, etc. et. al.,

Appellants and Defendants

---

CROSS APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

---

# AFFIDAVIT OF W. DAVID WESTON AND EXHIBIT OF REHEARING BRIEF OF CROSS APPELLANT W. DAVID WESTON

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W. DAVID WESTON
Pro Se
3572 Doverhill Drive
Salt Lake City, Utah

STATE OF UTAH )
ss.
County of Salt Lake )

I. W. David Weston, being first duly sworn, do hereby depose and state as follows:

1. That attached hereto is an exhibit that was prepared under my supervision entitled "Ore Loading Report - Telegraph Mine Heap Leach Pad." The purpose of the Exhibit is to illustrate that the recoverable accumulated gold on the leach pad in each quarter commencing March 1982, exceeded the quarterly production assessments made to working interest owners. Further, that gold was produced

and sold in addition to the souvenir bars of gold that were distributed to the Associates out of the first production.

2. That all items on the exhibit were introduced into the trial court as evidence and are before the Appeals Court as evidence.

3. That column one (1) of the exhibit entitled "Truck Load #'s" denotes the trip number of each truck loaded with crushed ore (-1/4"), cement and cyanide (for agglomeration) made in transferring ore to the leach pile on the date in column one. At the leach pile site the unloading and stacking operator recorded each truck load and the location of the leach pad where it was stacked on an Ore Loading Summary Report. See Exh. 837, 903 and Trial Transcript 2013 through 2017.

4. That column four (4) of the exhibit entitled "Assay" identifies the average assay value of the volume of ore set out in column two (2) entitled "Load-In Tons." As each truck was loaded a representative sample of the ore being loaded was taken. Following a days operation these samples were blended for approximately 100 tons and a single representative sample sent for assaying. See Exh. 903, 823, 907, Trial Transcript pgs. 2652-2653,2657.

5. That column five (5) of the exhibit "Oz Au/Load" sets forth the number of ounces of gold in the ore delivered by the respective truck number which was then stacked on the leach pad.

6. That column eleven (11) of the exhibit entitled "Recoverable (72%) Gold Value" is the gold that is recoverable from leaching over time (See Exh. 261) less any amounts which were actually recovered (Column seven (7) "Gold Sales Ounces"). See Exh. 889 and trial transcript pg. 2493.

7. That column twelve (12) entitled "Quarterly Production Assessments" is the total amount assessed all working interest holders for production costs in the prior

quarter (i.e. expenses to prepare the ore for removal to the leach pad and the leaching expenses etc.) See Exh. 86, 90, 109, 110, 97, 95.

8. That also attached are true copies of Trial Exh. 95, 109 and 110 which also illustrate in the three right hand columns the number of tons of ore loaded to the pad, the average grade of the ore and the ounces available for extraction from the ore loaded.

Dated this 22nd day of March 1990.

David Weston

Subscribed to and sworn before me this 22nd day of March 1990.

Notary Public residing in
Salt Lake County, Utah

ORE LOADING SUMMARY REPORT....
TELEGRAPH MINE HEAP LEACH PAD.



| # | DATE | (1) TRUCK LOAD #'S | (2) LOAD-IN TONS | (3) CUMULATIVE TONS | (4) ASSAY | (5) OZ AU/ LOAD | (6) CUMULATIVE OUNCES AU | (7) GOLD SALES: OUNCES | (8) CUMUL SALES: OUNCES | (9) GOLD SPOT $/OZ | (10) GOLD SALES: $ AMT RCVD | (11) RECOVERABLE (72%) GOLD VALUE ($) | (12) QUARTERLY PRODUCTION ASSESS.($) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 3/18/82 | 1-12 | 120.00 | 120.00 | .355 | 42.60 | 42.60 | | | | | | |
| 2 | 3/19/82 | 13-17 | 50.00 | 170.00 | .100 | 5.00 | 47.60 | | | | | | |
| 3 | 3/22/82 | 18-23 | 60.00 | 230.00 | .150 | 9.00 | 56.60 | | | | | | |
| 4 | 3/23/82 | 24-35 | 120.00 | 350.00 | .150 | 18.00 | 74.60 | | | | | | |
| 5 | 3/24/82 | 36-48 | 130.00 | 480.00 | .160 | 20.80 | 95.40 | | | | | | |
| 6 | 3/25/82 | 49-53 | 50.00 | 530.00 | .110 | 5.50 | 100.90 | | | | | | |
| 7 | 3/26/82 | 54-60 | 76.00 | 606.00 | .060 | 4.56 | 105.46 | | | | | | |
| 8 | 3/29/82 | 61-75 | 153.50 | 759.50 | .160 | 24.56 | 130.02 | | | | | | |
| 9 | 3/31/82 | 76-91 | 170.00 | 929.50 | .330 | 56.10 | 186.12 | | | | | | |
| 10 | 3/31/82 | 92-101 | 108.00 | 1037.50 | .120 | 12.96 | 199.08 | | | | | | |
| 11 | 3/31/82 | 102-111 | 108.00 | 1145.50 | .100 | 10.80 | 209.88 | | | | | | 24495.80 |
| MARCH | TOTALS | | 1145.50 | 1145.50 | .183 | 209.88 | 209.88 | .00 | .00 | 363.73 | .00 | 54964.55 | 24495.80 |
| 12 | 4/1/82 | 112-121 | 112.20 | 1257.70 | .180 | 20.20 | 230.08 | | | | | | |
| 13 | 4/2/82 | 122-132 | 130.00 | 1387.70 | .170 | 22.10 | 252.18 | | | | | | |
| 14 | 4/2/82 | 133-142 | 130.00 | 1517.70 | .240 | 31.20 | 283.38 | | | | | | |
| 15 | 4/5/82 | 143-158 | 176.00 | 1693.70 | .060 | 10.56 | 293.94 | | | | | | |
| 16 | 4/6/82 | 159-175 | 187.00 | 1880.70 | .580 | 108.46 | 402.40 | | | | | | |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 17 | 4/7/82 | 176-197 | 242.00 | 2122.70 | .630 | 152.46 | 554.86 | | | | | | |
| 18 | 4/8/82 | 198-222 | 278.00 | 2400.70 | .320 | 88.96 | 643.82 | | | | | | |
| 19 | 4/9/82 | 223-238 | 176.00 | 2576.70 | .300 | 52.80 | 696.62 | | | | | | |
| 20 | | 239-244 | 66.00 | 2642.70 | .060 | 3.96 | 700.58 | | | | | | |
| 21 | 4/13/82 | 245-255 | 121.00 | 2763.70 | .360 | 43.56 | 744.14 | | | | | | |
| 22 | 4/14/82 | 256-267 | 132.00 | 2895.70 | .040 | 5.28 | 749.42 | | | | | | |
| 23 | 4/15/82 | 268-285 | 198.00 | 3093.70 | .080 | 15.84 | 765.26 | | | | | | |
| 24 | 4/21/82 | 286-294 | 99.00 | 3192.70 | .240 | 23.76 | 789.02 | | | | | | |
| 25 | 4/22/82 | 295-301 | 77.00 | 3269.70 | .410 | 31.57 | 820.59 | | | | | | |
| 26 | | 302-309 | 88.00 | 3357.70 | .110 | 9.68 | 830.27 | | | | | | |
| 27 | 4/26/82 | 310-317 | 88.00 | 3445.70 | .400 | 35.20 | 865.47 | | | | | | |
| 28 | 4/27/82 | 318-324 | 77.00 | 3522.70 | .080 | 6.16 | 871.63 | | | | | | |
| 29 | 4/27/82 | 325-331 | 77.00 | 3599.70 | .200 | 15.40 | 887.03 | | | | | | |
| 30 | 4/28/82 | 332-341 | 110.00 | 3709.70 | .100 | 11.00 | 898.03 | | | | | | |
| 31 | 4/28/82 | 342-355 | 154.00 | 3863.70 | .500 | 77.00 | 975.03 | | | | | | |
| 32 | 4/28/82 | 351-355 | 55.00 | 3918.70 | .500 | 27.50 | 1002.53 | | | | | | |
| 33 | 4/29/82 | 356-360 | 55.00 | 3973.70 | .500 | 27.50 | 1030.03 | | | | | | |
| APRIL | TOTALS | | 2828.20 | 3973.70 | .290 | 820.15 | 1030.03 | .00 | .00 | 312.00 | .00 | 231385.04 | .00 |
| 34 | 5/3/82 | 361-370 | 112.20 | 4085.90 | .500 | 56.10 | 1086.13 | | | | | | |
| 35 | 5/5/82 | 371-376 | 67.32 | 4153.22 | .500 | 33.66 | 1119.79 | | | | | | |
| 36 | 5/5/82 | 377-382 | 67.32 | 4220.54 | .510 | 34.33 | 1154.12 | | | | | | |
| 37 | 5/7/82 | 383-395 | 145.86 | 4366.40 | .560 | 81.68 | 1235.80 | | | | | | |
| 38 | 5/7/82 | 396-399 | 44.44 | 4410.84 | .500 | 22.22 | 1258.02 | | | | | | |
| 39 | 5/10/82 | 400-410 | 123.42 | 4534.26 | .500 | 61.71 | 1319.73 | | | | | | |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 40 | 5/10/82 | 411-422 | 134.64 | 4668.90 | .320 | 43.08 | 1362.82 | | | | | | |
| 41 | 5/11/82 | 423-429 | 78.54 | 4747.44 | .450 | 35.34 | 1398.16 | | | | | | |
| 42 | 5/11/82 | 430-440 | 123.42 | 4870.86 | .500 | 61.71 | 1459.87 | | | | | | |
| 43 | 5/11/82 | 441-449 | 100.98 | 4971.84 | .550 | 55.54 | 1515.41 | | | | | | |
| 44 | 5/12/82 | 450-459 | 112.20 | 5084.04 | .220 | 24.68 | 1540.09 | | | | | | |
| 45 | 5/12/82 | 460-469 | 112.20 | 5196.24 | .180 | 20.20 | 1560.29 | | | | | | |
| 46 | 5/12/82 | 470-477 | 84.34 | 5280.58 | .390 | 32.89 | 1593.18 | | | | | | |
| 47 | 5/13/82 | 478-489 | 134.64 | 5415.22 | .500 | 67.32 | 1660.50 | | | | | | |



| # | DATE | (1) TRUCK LOAD #'S | (2) LOAD-IN TONS | (3) CUMULATIVE TONS | (4) ASSAY | (5) OZ AU/ LOAD | (6) CUMULATIVE OUNCES AU | (7) GOLD SALES: OUNCES | (8) CUMU SALES: OUNCES | (9) GOLD SPOT $/OZ | (10) GOLD SALES: $ AMT RCVD | (11) RECOVERABLE (72%) GOLD VALUE ($) | (12) QUARTERLY PRODUCTION ASSESS.($) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 48 | 5/13/82 | 490-499 | 112.20 | 5527.42 | .340 | 38.15 | 1698.65 | | | | | | |
| 49 | 5/13/82 | 500-509 | 123.42 | 5650.84 | .330 | 40.73 | 1739.38 | | | | | | |
| 50 | 5/13/82 | 510-514 | 56.10 | 5706.94 | .240 | 13.46 | 1752.84 | | | | | | |
| 51 | 5/14/82 | 515-519 | 56.10 | 5763.04 | .240 | 13.46 | 1766.30 | | | | | | |
| 52 | 5/14/82 | 520-529 | 112.20 | 5875.24 | .280 | 31.42 | 1797.72 | | | | | | |
| 53 | 5/14/82 | 530-548 | 213.18 | 6088.42 | .180 | 38.37 | 1836.09 | | | | | | |
| 54 | 5/17/82 | 549-578 | 336.60 | 6425.02 | .180 | 60.59 | 1896.68 | | | | | | |
| 55 | 5/18/82 | 578-587 | 112.20 | 6537.22 | .780 | 87.52 | 1984.20 | | | | | | |
| 56 | 5/18/82 | 588-599 | 134.64 | 6671.86 | .830 | 111.75 | 2095.95 | | | | | | |
| 57 | 5/18/82 | 600-607 | 89.76 | 6761.62 | .210 | 18.85 | 2114.80 | | | | | | |
| 58 | 5/19/82 | 608-609 | 22.44 | 6784.06 | .330 | 7.41 | 2122.20 | | | | | | |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 59 | 5/19/82 | 610-619 | 112.20 | 6896.26 | .230 | 25.81 | 2148.01 | | | | | | |
| 60 | 5/19/82 | 620-637 | 201.96 | 7098.22 | .210 | 42.41 | 2190.42 | | | | | | |
| 61 | 5/20/82 | 638-639 | 22.44 | 7120.66 | .210 | 4.71 | 2195.13 | | | | | | |
| 62 | 5/20/82 | 640-649 | 112.20 | 7232.86 | .240 | 26.93 | 2222.06 | | | | | | |
| 63 | 5/20/82 | 650-659 | 112.20 | 7345.06 | .320 | 35.90 | 2257.97 | | | | | | |
| 64 | 5/20/82 | 660-669 | 112.20 | 7457.26 | .140 | 15.71 | 2273.67 | | | | | | |
| 65 | 5/20/82 | 670-677 | 89.76 | 7547.02 | .220 | 19.75 | 2293.42 | | | | | | |
| 66 | 5/21/82 | 678-687 | 112.20 | 7659.22 | .770 | 86.39 | 2379.81 | | | | | | |
| 67 | 5/21/82 | 688-697 | 112.20 | 7771.42 | .290 | 32.54 | 2412.35 | | | | | | |
| 68 | 5/21/82 | 698-707 | 112.20 | 7883.62 | .410 | 46.00 | 2458.35 | | | | | | |
| 69 | 5/21/82 | 708-717 | 112.20 | 7995.82 | .500 | 56.10 | 2514.45 | | | | | | |
| 70 | 5/24/82 | 720-726 | 80.50 | 8076.32 | .300 | 24.15 | 2538.60 | | | | | | |
| 71 | 5/24/82 | 727-734 | 92.00 | 8168.32 | .760 | 69.92 | 2608.52 | | | | | | |
| 72 | 5/25/82 | 735-743 | 100.98 | 8269.30 | .470 | 47.46 | 2655.99 | | | | | | |
| 73 | 5/25/82 | 744-752 | 100.98 | 8370.28 | .060 | 6.06 | 2662.04 | | | | | | |
| 74 | 5/26/82 | 753-760 | 89.76 | 8460.04 | .410 | 36.80 | 2698.85 | | | | | | |
| 75 | 5/26/82 | 761-767 | 78.54 | 8538.58 | .360 | 28.27 | 2727.12 | | | | | | |
| 76 | 5/27/82 | 768-777 | 112.20 | 8650.78 | .140 | 15.71 | 2742.83 | | | | | | |
| 77 | 5/27/82 | 778-787 | 112.20 | 8762.98 | .230 | 25.81 | 2768.63 | | | | | | |
| 78 | 5/27/82 | 788-796 | 100.98 | 8863.96 | .490 | 49.48 | 2818.11 | | | | | | |
| 79 | 5/28/82 | 797-804 | 89.76 | 8953.72 | .280 | 25.13 | 2843.25 | | | | | | |
| 80 | 5/28/82 | 805-814 | 112.20 | 9065.92 | .300 | 33.66 | 2876.91 | | | | | | |
| 81 | 5/28/82 | 815-823 | 100.98 | 9166.90 | .190 | 19.19 | 2896.09 | | | | | | |
| MAY | TOTALS | | 5193.20 | 9166.90 | .359 | 1866.07 | 2896.09 | .00 | .00 | 311.30 | .00 | 649118.70 | .00 |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 82 | 6/1/82 | 824-833 | 112.20 | 9279.10 | .300 | 33.66 | 2929.75 | | | | | | |
| 83 | 6/1/82 | 834-843 | 112.20 | 9391.30 | .090 | 10.10 | 2939.85 | | | | | | |
| 84 | 6/1/82 | 844-851 | 89.76 | 9481.06 | .350 | 31.42 | 2971.27 | | | | | | |
| 85 | 6/2/82 | 852-859 | 89.76 | 9570.82 | .180 | 16.16 | 2987.42 | | | | | | |
| 86 | 6/2/82 | 860-868 | 100.98 | 9671.80 | .180 | 18.18 | 3005.60 | | | | | | |
| 87 | 6/3/82 | 869-876 | 89.76 | 9761.56 | .080 | 7.18 | 3012.78 | | | | | | |
| 88 | 6/3/82 | 877-884 | 89.76 | 9851.32 | .220 | 19.75 | 3032.53 | | | | | | |
| 89 | 6/3/82 | 885-892 | 89.76 | 9941.08 | .420 | 37.70 | 3070.23 | | | | | | |
| 90 | 6/7/82 | 893-901 | 100.98 | 10042.06 | .340 | 34.33 | 3104.56 | | | | | | |
| 91 | 6/7/82 | 902-910 | 100.98 | 10143.04 | .500 | 50.49 | 3155.05 | | | | | | |
| 92 | 6/7/82 | 911-918 | 89.76 | 10232.80 | .450 | 40.39 | 3195.44 | | | | | | |
| 93 | 6/8/82 | 919-929 | 123.42 | 10356.22 | .170 | 20.98 | 3216.42 | | | | | | |
| 94 | 6/16/82 | 930-949 | 224.40 | 10580.62 | .065 | 14.59 | 3231.01 | | | | | | |
| 95 | 6/17/82 | 950-959 | 112.20 | 10692.82 | .200 | 22.44 | 3253.45 | | | | | | |
| 96 | 6/17/82 | 960-969 | 112.20 | 10805.02 | .050 | 5.61 | 3259.06 | | | | | | |
| 97 | 6/17/82 | 970-977 | 89.76 | 10894.78 | .050 | 4.49 | 3263.55 | | | | | | |



| # | DATE | (1) TRUCK LOAD #'S | (2) LOAD-IN TONS | (3) CUMULATIVE TONS | (4) ASSAY | (5) OZ AU/ LOAD | (6) CUMULATIVE OUNCES AU | (7) GOLD SALES OUNCES | (8) CUMUL SALES: OUNCES | (9) GOLD SPOT $/OZ | (10) GOLD SALES: $ AMT RCVD | (11) RECOVERABLE (72%) GOLD VALUE ($) | (12) QUARTERLY PRODUCTION ASSESS.($) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 98 | 6/21/82 | 978-985 | 89.76 | 10984.54 | .074 | 6.64 | 3270.19 | | | | | | |
| 99 | 6/21/82 | 986-992 | 78.54 | 11063.08 | .040 | 3.14 | 3273.33 | | | | | | |
| 100 | 6/23/82 | 993-999 | 78.54 | 11141.62 | .106 | 8.33 | 3281.66 | 93.75 | 93.75 | 304.00 | | | |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 101 | 6/23/82 | 1000-1006 | 78.54 | 11220.16 | .078 | 6.13 | 3287.78 | | | | | | |
| 102 | 6/23/82 | 1007-1013 | 78.54 | 11298.70 | .048 | 3.77 | 3291.55 | | | | | | |
| 103 | 6/30/82 | 1014-1020 | 78.54 | 11377.24 | .440 | 34.56 | 3326.11 | | | | | | |
| 104 | 6/30/82 | 1021-1025 | 78.54 | 11455.78 | .080 | 6.28 | 3332.39 | | | | | | |
| 105 | 6/30/82 | 1026-1033 | 89.76 | 11545.54 | .070 | 6.28 | 3338.68 | | | | | | 297488.80 |
| JUNE | TOTALS | | 2378.64 | 11545.54 | .186 | 442.58 | 3338.68 | 93.75 | 93.75 | 304.00 | .00 | 702269.65 | 297488.80 |
| 106 | 7/5/82 | 1034-1043 | 112.20 | 11657.74 | .090 | 10.10 | 3348.78 | | | | | | |
| 107 | 7/6/82 | 1044-1051 | 89.76 | 11747.50 | .060 | 5.39 | 3354.16 | | | | | | |
| 108 | 7/6/82 | 1052-1059 | 89.76 | 11837.26 | .080 | 7.18 | 3361.34 | 2.41 | 96.16 | 313.50 | 24322.00 | | |
| 109 | 7/8/82 | 1060-1066 | 78.54 | 11915.80 | .080 | 6.28 | 3367.62 | 12.35 | 108.51 | 353.00 | 8920.00 | | |
| 110 | 7/8/82 | 1067-1073 | 78.54 | 11994.34 | .050 | 3.93 | 3371.55 | | | | | | |
| 111 | 7/8/82 | 1074-1080 | 78.54 | 12072.88 | .060 | 4.71 | 3376.26 | | | | | | |
| 112 | 7/12/82 | 1081-1087 | 78.54 | 12151.42 | .090 | 7.07 | 3383.33 | | | | | | |
| 113 | 7/12/82 | 1088-1094 | 78.54 | 12229.96 | .060 | 4.71 | 3388.05 | | | | | | |
| 114 | 7/12/82 | 1095-1101 | 78.54 | 12308.50 | .050 | 3.93 | 3391.97 | | | | | | |
| 115 | 7/13/82 | 1102-1109 | 89.76 | 12398.26 | .080 | 7.18 | 3399.15 | | | | | | |
| 116 | 7/13/82 | 1110-1117 | 89.76 | 12488.02 | .090 | 8.08 | 3407.23 | | | | | | |
| 117 | 7/13/82 | 1118-1125 | 89.76 | 12577.78 | .070 | 6.28 | 3413.51 | | | | | | |
| 118 | 7/14/82 | 1126-1137 | 134.64 | 12712.42 | .120 | 16.16 | 3429.67 | | | | | | |
| 119 | 7/14/82 | 1138-1143 | 67.32 | 12779.74 | .070 | 4.71 | 3434.38 | 11.80 | 120.31 | 347.50 | 4100.50 | DISTRIBUTED..... | |
| 120 | 7/15/82 | 1144-1152 | 100.98 | 12880.72 | .090 | 9.09 | 3443.47 | | | | | | |
| 121 | 7/16/82 | 1153-1158 | 67.32 | 12948.04 | .210 | 14.14 | 3457.61 | | | | | | |
| 122 | 7/16/82 | 1159-1164 | 67.32 | 13015.36 | .110 | 7.41 | 3465.01 | | | | | | |
| 123 | 7/16/82 | 1165-1171 | 78.54 | 13093.90 | .090 | 7.07 | 3472.08 | | | | | | |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 124 | | 1172-1187 | | 13093.90 | | .00 | 3472.08 | 100.00 | 220.31 | 347.50 | | | |
| 125 | 7/20/82 | 1188-1193 | 67.32 | 13161.22 | .070 | 4.71 | 3476.80 | | | | | | |
| 126 | 7/20/82 | 1194-1199 | 67.32 | 13228.54 | .110 | 7.41 | 3484.20 | | | | | | |
| 127 | 7/20/82 | 1200-1206 | 78.54 | 13307.08 | .080 | 6.28 | 3490.48 | | | | | | |
| 128 | 7/21/82 | 1207-1213 | 78.54 | 13385.62 | .080 | 6.28 | 3496.77 | | | | | | |
| 129 | 7/21/82 | 1214-1220 | 78.54 | 13464.16 | .030 | 2.36 | 3499.12 | | | | | | |
| 130 | 7/21/82 | 1221-1227 | 78.54 | 13542.70 | .040 | 3.14 | 3502.26 | | | | | | |
| JULY | TOTALS | | 1997.16 | 13542.70 | .082 | 163.59 | 3502.26 | 126.56 | 220.31 | 453.83 | 37342.50 | 1044416.00 | .00 |
| 131 | 8/2/82 | 1228-1234 | 78.54 | 13621.24 | .100 | 7.85 | 3510.12 | | | | | | |
| 132 | 8/2/82 | 1235-1241 | 78.54 | 13699.78 | .040 | 3.14 | 3513.26 | | | | | | |
| 133 | 8/3/82 | 1242-1249 | 89.76 | 13789.54 | .150 | 13.46 | 3526.72 | | | | | | |
| 134 | 8/3/82 | 1250-1257 | 89.76 | 13879.30 | .140 | 12.57 | 3539.29 | | | | | | |
| 135 | 8/3/82 | 1258-1265 | 89.76 | 13969.06 | .170 | 15.26 | 3554.55 | | | | | | |
| 136 | 8/3/82 | 1266-1273 | 89.76 | 14058.82 | .170 | 15.26 | 3569.81 | | | | | | |
| 137 | 8/3/82 | 1274-1281 | 89.76 | 14148.58 | .280 | 25.13 | 3594.94 | | | | | | |
| 138 | 8/4/82 | 1282-1287 | 67.32 | 14215.90 | .110 | 7.41 | 3602.35 | | | | | | |
| 139 | 8/4/82 | 1288-1293 | 67.32 | 14283.22 | .120 | 8.08 | 3610.43 | 40.00 | 260.31 | 346.25 | | | |
| 140 | 8/4/82 | 1294-1300 | 78.54 | 14361.76 | .070 | 5.50 | 3615.92 | | | | | | |
| 141 | 8/5/82 | 1301-1307 | 78.54 | 14440.30 | .070 | 5.50 | 3621.42 | | | | | | |
| 142 | 8/5/82 | 1308-1314 | 78.54 | 14518.84 | .050 | 3.93 | 3625.35 | | | | | | |
| 143 | 8/5/82 | 1315-1322 | 89.76 | 14608.60 | .100 | 8.98 | 3634.32 | | | | | | |
| 144 | 8/6/82 | 1323-1342 | 224.40 | 14833.00 | .030 | 6.73 | 3641.06 | 9.24 | 269.55 | 344.75 | 37531.00 | | |
| 145 | 8/6/82 | 1343-1351 | 100.98 | 14933.98 | .060 | 6.06 | 3647.11 | | | | | | |
| 146 | 8/9/82 | 1352-1360 | 100.98 | 15034.96 | .050 | 5.05 | 3652.16 | | | | | | |
| 147 | 8/9/82 | 1361-1369 | 100.98 | 15135.94 | .070 | 7.07 | 3659.23 | | | | | | |

| # | DATE | (1) TRUCK LOAD #'S | (2) LOAD-IN TONS | (3) CUMULATIVE TONS | (4) ASSAY | (5) OZ AU/ LOAD | (6) CUMULATIVE OUNCES AU | (7) GOLD SALES: OUNCES | (8) CUMUL SALES: OUNCES | (9) GOLD SPOT $/OZ | (10) GOLD SALES: $ AMT RCVD | (11) RECOVERABLE (72%) GOLD VALUE ($) | (12) QUARTERLY PRODUCTION ASSESS.($) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 148 | 8/9/82 | 1370-1378 | 100.98 | 15236.92 | .030 | 3.03 | 3662.26 | | | | | | |
| 149 | 8/9/82 | 1379-1386 | 89.76 | 15326.68 | .120 | 10.77 | 3673.03 | | | | | | |
| 150 | 8/10/82 | 1387-1392 | 67.32 | 15394.00 | .050 | 3.37 | 3676.40 | | | | | | |
| 151 | 8/10/82 | 1393-1398 | 67.32 | 15461.32 | .040 | 2.69 | 3679.09 | | | | | | |
| 152 | 8/11/82 | 1399-1404 | 78.54 | 15539.86 | .040 | 3.14 | 3682.23 | | | | | | |
| 153 | 8/11/82 | 1405-1412 | 78.54 | 15618.40 | .210 | 16.49 | 3698.73 | | | | | | |
| 154 | 8/12/82 | 1413-1418 | 78.54 | 15696.94 | .080 | 6.28 | 3705.01 | | | | | | |
| 155 | 8/12/82 | 1419-1424 | 67.32 | 15764.26 | .500 | 33.66 | 3738.67 | | | | | | |
| 156 | 8/14/82 | 1424-1431 | 89.76 | 15854.02 | .150 | 13.46 | 3752.13 | | | | | | |
| 157 | 8/14/82 | 1432-1440 | 89.76 | 15943.78 | .110 | 9.87 | 3762.01 | | | | | | |
| 158 | 8/14/82 | 1441-1447 | 89.76 | 16033.54 | .080 | 7.18 | 3769.19 | | | | | | |
| 159 | 8/16/82 | 1448-1454 | 78.54 | 16112.08 | .080 | 6.28 | 3775.47 | | | | | | |
| 160 | 8/16/82 | 1455-1461 | 78.54 | 16190.62 | .080 | 6.28 | 3781.75 | | | | | | |
| 161 | 8/16/82 | 1462-1468 | 78.54 | 16269.16 | .080 | 6.28 | 3788.04 | | | | | | |
| 162 | 8/16/82 | 1469-1475 | 78.54 | 16347.70 | .080 | 6.28 | 3794.32 | | | | | | |
| 163 | 8/16/82 | 1476-1482 | 78.54 | 16426.24 | .080 | 6.28 | 3800.60 | | | | | | |
| 164 | 8/17/82 | 1483-1490 | 89.76 | 16516.00 | .090 | 8.08 | 3808.68 | | | | | | |
| 165 | 8/17/82 | 1491-1498 | 89.76 | 16605.76 | .070 | 6.28 | 3814.97 | | | | | | |
| 166 | 8/17/82 | 1499-1507 | 100.98 | 16706.74 | .050 | 5.05 | 3820.02 | | | | | | |
| 167 | 8/18/82 | 1508-1513 | 67.32 | 16774.06 | .032 | 2.15 | 3822.17 | | | | | | |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 168 | 8/18/82 | 1514-1519 | 67.32 | 16841.38 | .041 | 2.76 | 3824.93 | | | | |
| 169 | 8/18/82 | 1520-1526 | 78.54 | 16919.92 | .040 | 3.14 | 3828.07 | | | | |
| 170 | 8/18/82 | 1527-1535 | 100.98 | 17020.90 | .092 | 9.29 | 3837.36 | | | | |
| 171 | 8/19/82 | 1536-1542 | 78.54 | 17099.44 | .044 | 3.46 | 3840.82 | | | | |
| 172 | 8/19/82 | 1543-1549 | 78.54 | 17177.98 | .060 | 4.71 | 3845.53 | | | | |
| 173 | 8/19/82 | 1550-1556 | 78.54 | 17256.52 | .063 | 4.95 | 3850.48 | | | | |
| 174 | 8/20/92 | 1557-1563 | 78.54 | 17335.06 | .033 | 2.59 | 3853.07 | | | | |
| 175 | 8/20/82 | 1564-1570 | 78.54 | 17413.60 | .031 | 2.43 | 3855.50 | 35.00 | 304.55 | 386.50 | |
| 176 | 8/20/82 | 1571-1576 | 67.32 | 17480.92 | .032 | 2.15 | 3857.66 | | | | |
| 177 | 8/20/82 | 1577-1583 | 78.54 | 17559.46 | .120 | 9.42 | 3867.08 | | | | |
| 178 | 8/23/82 | 1584-1589 | 67.32 | 17626.78 | .180 | 12.12 | 3879.20 | | | | |
| 179 | 8/23/82 | 1590-1597 | 89.76 | 17716.54 | .180 | 16.16 | 3895.36 | | | | |
| 180 | 8/23/82 | 1598-1604 | 78.54 | 17795.08 | .180 | 14.14 | 3909.49 | | | | |
| 181 | 8/23/82 | 1605-1609 | 56.10 | 17851.18 | .180 | 10.10 | 3919.59 | | | | |
| 182 | 8/24/82 | 1610-1616 | 78.54 | 17929.72 | .060 | 4.71 | 3924.31 | | | | |
| 183 | 8/24/82 | 1617-1622 | 67.32 | 17997.04 | .350 | 23.56 | 3947.87 | | | | |
| 184 | 8/25/82 | 1623-1628 | 67.32 | 18064.36 | .510 | 34.33 | 3982.20 | | | | |
| 185 | 8/25/82 | 1629-1634 | 67.32 | 18131.68 | .740 | 49.82 | 4032.02 | | | | |
| 186 | 8/25/82 | 1635-1640 | 67.32 | 18199.00 | .400 | 26.93 | 4058.95 | | | | |
| 187 | 8/26/82 | 1641-1654 | 157.08 | 18356.08 | .100 | 15.71 | 4074.65 | | | | |
| 188 | 8/26/82 | 1655-1667 | 145.86 | 18501.94 | .120 | 17.50 | 4092.16 | | | | |
| 189 | 8/27/82 | 1668-1678 | 123.42 | 18625.36 | .110 | 13.58 | 4105.73 | | | | |
| 190 | 8/27/82 | 1679-1687 | 100.98 | 18726.34 | .080 | 8.08 | 4113.81 | | | | |
| 191 | 8/28/82 | 1688-1699 | 134.64 | 18860.98 | .110 | 14.81 | 4128.62 | | | | |
| 192 | 8/30/82 | 1700-1708 | 100.98 | 18961.96 | .070 | 7.07 | 4135.69 | | | | |
| 193 | 8/31/82 | 1709-1720 | 134.64 | 19096.60 | .100 | 13.46 | 4149.15 | | | | |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|
| AU6 | TOTALS | - | 5553.90 | 19096.60 | .116 | 646.89 | 4149.15 | 84.24 | 304.55 | | | |



| # | DATE | (1) TRUCK LOAD #'S | (2) LOAD-IN TONS | (3) CUMULATIVE TONS | (4) ASSAY | (5) OZ AU/ LOAD | (6) CUMULATIVE OUNCES AU | (7) GOLD SALES: OUNCES | (8) CUMUL SALES: OUNCES | (9) GOLD SPOT $/OZ | (10) GOLD SALES: $ AMT RCVD | (11) RECOVERABLE (72%) GOLD VALUE ($) | (12) QUARTERLY PRODUCTION ASSESS.($) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 194 | 9/1/82 | 1721-1730 | 112.20 | 19208.80 | .180 | 20.20 | 4169.35 | 34.00 | 338.55 | 405.25 | .00 | | |
| 195 | 9/1/82 | 1731-1740 | 112.20 | 19321.00 | .180 | 20.20 | 4189.54 | | | | | | |
| 196 | 9/2/82 | 1739-1760 | 246.84 | 19567.84 | .040 | 9.87 | 4199.42 | | | | | | |
| 197 | 9/2/82 | 1761-1773 | 145.86 | 19713.70 | .050 | 7.29 | 4206.71 | | | | | | |
| 198 | 9/6/82 | 1774-1783 | 112.20 | 19825.90 | .060 | 6.73 | 4213.44 | 8.97 | 347.52 | 453.00 | 4205.00 | | |
| 199 | 9/13/82 | 1784-1970 | | 19825.90 | | .00 | 4213.44 | 3.73 | 351.25 | 439.00 | 11870.00 | | |
| 200 | 9/17/82 | 1971-1978 | 88.00 | 19913.90 | .720 | 63.36 | 4276.80 | 23.00 | 374.25 | 448.50 | | | |
| 201 | 9/18/82 | 1979-1989 | 121.00 | 20034.90 | .120 | 14.52 | 4291.32 | .07 | 374.32 | 387.50 | 10011.00 | | |
| 202 | 9/20/82 | 1990-1995 | 66.00 | 20100.90 | .080 | 5.28 | 4296.60 | 2.35 | 376.67 | 424.25 | 12188.00 | | |
| 203 | 9/21/82 | 1996-2005 | 99.00 | 20199.90 | .090 | 8.91 | 4305.51 | 3.13 | 379.80 | 424.25 | 12108.00 | | |
| 204 | 2/829/2 | 2006-2015 | 80.00 | 20279.90 | .050 | 4.00 | 4309.51 | | | | | | |
| 205 | 9/22/82 | 2016-2025 | 80.00 | 20359.90 | .070 | 5.60 | 4315.11 | | | | | | |
| 206 | 9/22/82 | 2026-2027 | 20.00 | 20379.90 | .050 | 1.00 | 4316.11 | | | | | | |
| 207 | 9/23/82 | 2028-2035 | 80.00 | 20459.90 | .050 | 4.00 | 4320.11 | | | | | | |
| 208 | 9/23/82 | 2036-2050 | 120.00 | 20579.90 | .060 | 7.20 | 4327.31 | | | | | | |
| 209 | 9/24/82 | 2051-2059 | 72.00 | 20651.90 | .180 | 12.96 | 4340.27 | | | | | | |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 210 | 9/24/82 | 2060-2070 | 88.00 | 20739.90 | .180 | 15.84 | 4356.11 | | | | | | |
| 211 | 9/24/82 | 2071-2072 | 16.00 | 20755.90 | .180 | 2.88 | 4358.99 | | | | | | |
| 212 | 9/24/82 | 2073-2079 | 56.00 | 20811.90 | .330 | 18.48 | 4377.47 | | | | | | |
| 213 | 9/25/82 | 2080-2089 | 80.00 | 20891.90 | .180 | 14.40 | 4391.87 | | | | | | |
| 214 | 9/25/82 | 2090-2099 | 80.00 | 20971.90 | .120 | 9.60 | 4401.47 | | | | | | |
| 215 | 9/25/82 | 3000-3003 | 32.00 | 21003.90 | .120 | 3.84 | 4405.31 | | | | | | |
| 216 | 9/27/82 | 3004-3113 | 80.00 | 21083.90 | .500 | 40.00 | 4445.31 | | | | | | |
| 217 | 9/27/82 | 3114-3123 | 80.00 | 21163.90 | .230 | 18.40 | 4463.71 | | | | | | |
| 218 | 9/28/82 | 3124-3133 | 80.00 | 21243.90 | .180 | 14.40 | 4478.11 | | | | | | |
| 219 | 9/28/82 | 3134-3143 | 80.00 | 21323.90 | .180 | 14.40 | 4492.51 | | | | | | |
| 220 | 9/28/82 | 3144-3145 | 16.00 | 21339.90 | .060 | .96 | 4493.47 | | | | | | |
| 221 | 9/28/82 | 3146-3153 | 64.00 | 21403.90 | .180 | 11.52 | 4504.99 | | | | | | |
| 222 | 9/28/82 | 3154-3156 | 24.00 | 21427.90 | .060 | 1.44 | 4506.43 | | | | | | |
| 223 | 9/29/82 | 3157-3166 | 80.00 | 21507.90 | .580 | 46.40 | 4552.83 | | | | | | |
| 224 | 9/29/82 | 3167-3176 | 80.00 | 21587.90 | .040 | 3.20 | 4556.03 | | | | | | |
| 225 | 9/29/82 | 3177-3186 | 80.00 | 21667.90 | .190 | 15.20 | 4571.23 | | | | | | |
| 226 | 9/30/82 | 3187-3196 | 80.00 | 21747.90 | .120 | 9.60 | 4580.83 | | | | | | |
| 227 | 9/30/82 | 3197-3206 | 80.00 | 21827.90 | .050 | 4.00 | 4584.83 | | | | | | |
| 230 | 9/30/82 | 3207-3216 | 80.00 | 21907.90 | .070 | 5.60 | 4590.43 | | | | | | |
| 231 | 9/30/82 | 3217-3225 | 72.00 | 21979.90 | .060 | 4.32 | 4594.75 | | | | | | 305943.05 |
| SEPT | TOTALS | | 2883.30 | 21979.90 | .155 | 445.60 | 4594.75 | 75.25 | 379.80 | 2981.75 | 50382.00 | .00 | 305943.05 |
| 232 | 10/4/82 | 3226-3235 | 80.00 | 22059.90 | .060 | 4.80 | 4599.55 | 52.68 | 432.48 | 398.30 | 19933.00 | .00 | |

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| 233 | 10/4/82 | 3236-3245 | 80.00 | 22139.90 | .050 | 4.00 | 4603.55 | | | | | | |
| 234 | 10/5/82 | 3246-3255 | 80.00 | 22219.90 | .060 | 4.80 | 4608.35 | | | | | | |
| 235 | 10/5/82 | 3256-3265 | 80.00 | 22299.90 | .100 | 8.00 | 4616.35 | | | | | | |
| 236 | 10/5/82 | 3266-3273 | 64.00 | 22363.90 | .120 | 7.68 | 4624.03 | | | | | | |
| 237 | 10/6/82 | 3274-3283 | 80.00 | 22443.90 | .140 | 11.20 | 4635.23 | | | | | | |
| 238 | 10/6/82 | 3284-3293 | 80.00 | 22523.90 | .130 | 10.40 | 4645.63 | | | | | | |
| 239 | 10/6/82 | 3294-3298 | 40.00 | 22563.90 | .720 | 28.80 | 4674.43 | | | | | | |
| 240 | 10/7/82 | 3299-3320 | 176.00 | 22739.90 | .410 | 72.16 | 4746.59 | | | | | | |
| 241 | 10/7/82 | 3321-3329 | 72.00 | 22811.90 | .240 | 17.28 | 4763.87 | | | | | | |
| 242 | 10/8/82 | 3330-3351 | 220.00 | 23031.90 | .090 | 19.80 | 4783.67 | | | | | | |
| 243 | 10/8/82 | 3352-3357 | 48.00 | 23079.90 | .150 | 7.20 | 4790.87 | | | | | | |
| 244 | 10/28/82 | | | | | | | 72.19 | 504.67 | 416.50 | 28912.20 | .00 | .00 |
| OCT | TOTALS | | 1100.00 | 23079.90 | .178 | 196.12 | 4790.87 | 124.87 | 504.67 | 391.17 | 48845.20 | 1015880.13 | .00 |
| GRAND | TOTALS | | 23079.90 | 23079.90 | .208 | 4790.87 | 4790.87 | 504.67 | | 344.98 | 174100.70 | 1015880.13 | 321984.60 |